U.S. GOVERNMENT INFORMATION GPO

12-14-92
Vol. 57 No. 240
Pages 58961–59274

federal register

Monday
December 14, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate from the Assistant Secretary for Science and Education to the Administrator of the Extension Service, the authority to administer a grant program to upgrade agricultural and food science facilities at 1890 land-grant colleges pursuant to 7 U.S.C. 3222b and to establish and administer the development and utilization of an agricultural communications network pursuant to 7 U.S.C. 5926.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Marcus F. Gross, Jr., Office of the General Counsel, United States Department of Agriculture, Washington, DC, (202) 720–4076.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12278. This action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) and thus is exempt from its provisions.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies)

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

2. Section 2.108 is amended by adding new paragraphs (a)(57) and (a)(58) to read as follows:

§ 2.108 Administrator, Extension Service.

(a) Delegations.

* * * * *

(57) Administer grants to 1890 land-grant colleges, including Tuskegee University, to upgrade agricultural and food sciences facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222b).

(58) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

Dated: December 8, 1992.

Duane C. Acker,

Assistant Secretary for Science and Education.

[FR Doc. 92–30291 Filed 12–11–92; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580–AA15

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Wheat to (1) remove the description Red Durum wheat from the definition of Unclassed wheat; (2) reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the U.S. Sample grade aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight; (3) reduce the U.S. Sample grade criteria for pieces of glass from two or more to one or more (zero tolerance); (4) establish a cumulative total criteria for factors which may cause U.S. Sample grade; (5) reduce the limit for ergot from 0.30 percent to 0.05 percent by weight; (6) reduce the minimum criteria for the special grade light smutty wheat from more than 14 smut balls to more than 5 smut balls; and (7) reduce the grading limits for foreign material in grades 1, 2, and 3. FGIS is also revising inspection plan tolerances for wheat based on the final action. This action is the result of the periodic review by FGIS of the United States Standards for Wheat.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090–6454; telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action is classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no state or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, determined this final rule does not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this rule are approved by OMB and assigned OMB No. 0580–0013.

Background

On July 1, 1991, FGIS proposed in the **Federal Register** (56 FR 29907) to revise the U.S. Standards for Wheat by (1) removing the description Red Durum wheat from the definition of Unclassed wheat; (2) reducing the U.S. Sample grade criteria for stones from eight or more to four or more and eliminating the U.S. Sample grade aggregate weight criteria for stones; (3) reducing the U.S. Sample grade criteria for pieces of glass from two or more to one or more (zero tolerance); (4) establishing a cumulative total criteria for factors which may cause U.S. Sample grade; (5) reducing the limit for ergot from 0.30 percent to 0.05 percent by weight; (6) reducing the minimum criteria for the special grade light smutty wheat from more than 14 smut balls to more than 2 smut balls; and (7) reducing the grading limits for foreign material in grades 1, 2, and 3. FGIS further proposed to revise inspection plan tolerances for wheat based on the proposed changes.

Comment Review

During the 60-day comment period ending August 30, 1991, FGIS received a total of 28 comments from the various segments of the wheat industry including producers, end-users, grain handlers, foreign buyers, promotional associations, and a State agriculture department. The majority of the commentors addressed the specific issues included in the proposed action. Two commentors representing grain handlers expressed general opposition to all of the proposed changes without providing specific reasons for their opposition. The following paragraphs address comments received regarding the proposed changes.

Red Durum Wheat

Eighteen commentors supported or generally supported the proposal to remove Red Durum wheat from the definition of Unclassed wheat while eight commentors had no comment on the issue. Since no opposing reasons were presented in the comments received, FGIS is removing Red Durum wheat from the definition of Unclassed wheat as proposed.

Stones

Ten commentors supported or generally supported, ten commentors suggested modifications, three commentors opposed, and three commentors had no comments to the proposal to reduce the U.S. Sample grade criteria for stones from 8 or more stones to 4 or more stones and to eliminate the aggregate weight criteria.

The three commentors opposing the proposed changes represented the California wheat industry. Their comments indicated stones are inherently present in dwarf wheat varieties grown in California. They further indicated the proposed revision would unnecessarily penalize the value of the wheat and may encourage the production of lesser end-use quality wheat which exhibits better agronomic traits to avoid stones during harvest.

FGIS reviewed and evaluated this concern and concluded that the majority of wheat grown in California is of dwarf varieties; however, California wheat samples rarely contain stones. Generally, dirt clods and sand are found in semi-dwarf wheat when combines are run too close to the ground. The larger dirt clods and fine sand particles are removed as dockage during the inspection process. Further, small dirt clods remaining in the dockage-free wheat are not considered stones for grading purposes.

A review of California wheat samples selected by FGIS for monitoring inspection accuracy support this conclusion. The database used for the evaluation represents a random selection of wheat samples inspected in California from 1989 to 1991. Of the 1,520 samples in the database, 1,374 samples (90.4 percent) reported a determination for stones. Of the 1,374 samples reporting stone information, 22 samples (1.6 percent) exceeded the proposed limit of 4 or more stones and 8 samples (0.6 percent) exceeded the current limit of 8 or more stones. Consequently, revising the stone limits in wheat will not significantly affect the numerical grade of California wheat.

Ten commentors representing producers and grain handlers suggested modifications to the proposed action on stones. One of the ten commentors suggested replacing the count limit with an aggregate weight limit. The commentor indicated this action would ensure objectivity of and accuracy in inspection. The other nine commentors, suggesting a modification to the proposal, support the proposed action to reduce the stone count limit but recommended not eliminating the aggregate weight provision. Instead of completely eliminating the aggregate weight provision, some commentors suggested revising the U.S. Sample grade aggregate weight criteria from more than 0.2 percent by weight to more than 0.1 percent by weight. They also recommended determining U.S. Sample grade due to stones on a combination count and weight basis in comparison to the established separate count or weight basis. These commentors concluded that the maintenance of the aggregate weight provision ensures appropriate grading of grain in circumstances in which the presence of small stones is not a quality concern.

Historically, the wheat standards established stones as a U.S. Sample grade factor based on count alone. FGIS published a final rule on June 30, 1987 (52 FR 24414), which included weight criteria for stones independent of the count limit. Because the determination of stones is based on a dockage-free sample, excessively large and small stones are removed from the sample prior to the determination of stones. Therefore, the U.S. Sample grade determination is based on stones which are similar to the size of wheat kernels. It could take in excess of 7 to 10 stones to surpass the 0.1 percent aggregate weight limit. Consequently, reducing the count limit to 4 or more stones in combination with a weight limit in excess of 0.1 percent is viewed as not consistent with the proposed action. For these reasons, FGIS will not establish combination count and weight criteria for stones. FGIS will, however, establish a separate aggregate weight criteria for any number of stones in excess of 0.1 percent by weight.

One grain handler supporting the proposed change recommended a change to the basis of determination. Stones in wheat are determined on a dockage-free sample basis. This commentor indicated it is better to make the determination for stones on a sample before the removal of dockage because, unlike wheat for flour milling, feed wheat is generally not cleaned

prior to entering the feed mill. Therefore, the presence of any stones could cause damage to feed rolls and pellet disks.

Comments received in response to the advance notice of proposed rulemaking (54 FR 48752) and to the proposed rule (56 FR 29907) do not indicate a need to revise the basis of determination for stones in wheat. FGIS does not believe any changes to the basis of determination is needed at this time because wheat is primarily produced as a food grain, and the standards reflect normal cleaning prior to processing. Additionally, any changes to the basis of determination for stones could result in unknown economic impacts to producers and grain handlers because inspection data are not available to determine the frequency distribution of stones removed as dockage.

Based on the comments received and available information, FGIS is revising U.S. Sample grade criteria for stones in wheat from 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent by weight to 4 or more stones or any number of stones which have an aggregate weight in excess of 0.1 percent by weight.

Glass

Twenty-three commentors supported or generally supported and five had no comments to the proposal to reduce the Sample grade tolerance from two or more pieces of glass to one or more. Since no opposing reasons were presented in the comments received, FGIS is revising U.S. Sample grade criteria for glass in wheat from two or more pieces of glass to one or more (zero tolerance).

Cumulative Sample Grade Factors

Seventeen commentors supported or generally supported, three commentors suggested modifications, one commentor opposed, and five commentors had no comments to the proposal to establish a cumulative total criteria for factors which may cause U.S. Sample grade.

The one commentor opposing the proposed action represented producers from Virginia. They stated:

> We do not agree with this proposal as we understand it. We are not in favor of any existing class totals being equal to the cumulative total which by itself would cause a U.S. sample grade.

The three commentors suggesting modifications to the proposed changes represented the California wheat industry. Their comments indicated they support the concept for a total limit of suspected harmful and toxic substances; however, they stated that stones are not harmful or toxic and should not be included in this category. Stones are infrequently found in California wheat. Additionally, other harmful and toxic substances included in this category are infrequently found as well.

The National Association of Wheat Growers commented that this category is an important new addition which addresses the value of total defects on the end-use value. Based upon the comments received and available information, FGIS plans to establish the cumulative total Sample grade criteria as proposed.

Ergot

Fourteen commentors supported or generally supported, five commentors suggested modifications, and seven commentors had no comments to the proposal to reduce the limit for ergot from 0.30 percent to 0.05 percent by weight.

The five commentors suggesting modifications to the proposed action represented a foreign buyer, Idaho wheat producers, and grain handlers. The Japanese Food Agency, a foreign buyer of U.S. wheat, suggested establishing a 0.00 percent limit for ergot to match their existing regulations. Idaho wheat producers commented that they support the reduced ergot limits if a 3-year phase-in period is implemented. They suggested limits at 0.20, 0.10, and 0.05 for the first, second, and third years, respectively. Three grain handler comments indicated they do not oppose the reduction to 0.05 percent; however, they were surprised at the magnitude of reduction and urged FGIS to review the matter further to determine if a less drastic reduction would suffice.

FGIS has reviewed this issue further. Ergot, caused by a fungus and favored by wet, cool weather, occurs in wheat, rye, triticale, barley, and oats. Normally, the frequency of ergot on wheat is low, but is of a constant concern. Ergot can be avoided by planting seed free from sclerotia, crop rotation, deep soil tillage, and clean cultivation. Ergot does not get into food supplies if the infected wheat is commercially processed to remove impurities (1, 2).

Based on the comments received and available information, FGIS believes the proposed limit of 0.05 percent is reasonable and necessary.

Light Smutty Wheat

Thirteen commentors supported or generally supported, five commentors suggested modifications, and eight commentors had no comments to the proposal to reduce the criteria for the special grade light smutty wheat from more than 14 smut balls to more than 2 smut balls.

The Idaho Wheat Commission commented that they support an effort to maintain a more reliable certification process throughout the market. They suggested a phase-in period beginning at more than 5 smut balls and decreasing to more than 2 as proposed. The Idaho Grain Producers Association expressed a similar concern. Grain handlers indicated they do not oppose the reduction in the number of smut balls from 14 to 2. However, similar to their comments to ergot, they were surprised at the magnitude of reduction and urged FGIS to review the matter further to determine if a less drastic reduction would suffice.

FGIS included this proposed action in response to an Idaho grain handler who indicated the handling of wheat containing less than 14 smut balls potentially could grade light smutty due to odor when the smut balls break apart and disappear during handling. The need for reliable and repeatable certification results prompted FGIS to seek comments on the issue.

The comments received indicate the need for a change in the minimum limit of smut balls in a sample. Based on comments received and on available information, FGIS has determined to accept the Idaho wheat industry comments and revise the proposed action to establish the minimum smut ball criteria for light smutty wheat at more than 5 smut balls in 250 grams as a reasonable alternative to the proposed 2 smut ball limit. FGIS, however, will not implement a phase-in period but will evaluate the need to reduce the criteria further as part of future periodic reviews of the standards.

Foreign Material

Thirteen commentors supported or generally supported, eleven commentors opposed, two commentors suggested modifications, and one commentor had no comments to the proposal to reduce the grading limits for foreign material in grades 1, 2, and 3 from 0.5, 1.0, and 2.0 to 0.4, 0.7, and 1.3, respectively.

Grain handlers opposed the proposed action citing three reasons for their position. First, they indicated the market already supplies low foreign material wheat; therefore, changes in the standards as an incentive to maintain low foreign material is not needed. Second, they indicated there is no practical cleaning system to efficiently lower foreign material levels. Third, they indicated the proposal is premature in view of the current study undertaken

by the USDA Economic Research Service regarding the costs and benefits associated with improvements in the cleanliness of wheat.

Producers are supportive of the proposed action. Their comments indicate they support changes to improve the reputation of U.S. grain as a quality product while balancing the cost impact upon farmers.

The two comments received regarding modifications of the proposed rule generally supported the concept of reducing foreign material limits. One commentor suggested reducing the limits for U.S. Nos. 2 and 3 because these grades are commonly traded; however, they did not think it was necessary to reduce limits for U.S. No. 1 and would oppose that action. Another commentor strongly supported the position of reducing foreign material grade limits and suggested lowering the limits to 0.3, 0.5, and 1.0 for U.S. Nos. 1, 2, and 3 instead of the proposed limits of 0.4, 0.7, and 1.3.

In response to the opposing views, FGIS evaluated the situation and reached the following conclusions. Producers initiated discussions to reduce foreign material limits in wheat. Foreign material is composed of non-wheat material which is similar in size, shape, and density of wheat kernels. This material originates at the farm level and usually consists of rye, sorghum, and various weed seeds. Consequently, any economic impact as a result of revisions to foreign material limits will affect the producer. The FGIS-proposed limits complement current agronomic practices. As a result, the proposed limits should virtually have no economic impact on producer revenues due to foreign material discounts imposed by the grain industry.

Based on the above discussion and comments and other available information, FGIS is reducing the grading limits for foreign material in grades 1, 2, and 3 as proposed from 0.5, 1.0, and 2.0 to 0.4, 0.7, and 1.3, respectively.

Grade Chart Format and Authority Citation

FGIS proposed to revise the grade chart format in § 810.2204(a), Grades and grade requirements for all classes of wheat, except Mixed wheat, to improve the readability of the grade chart. Also, FGIS proposed to revise the authority citation for part 810. No comments were received regarding this action. Therefore, FGIS is revising the grade chart format and the authority citation as proposed with minor modifications for clarity.

Inspection Plan Tolerances

Five commentors supported or generally supported, one commentor opposed, one commentor suggested modifications, and eighteen commentors had no comments to the proposal to revise the breakpoints for ergoty wheat from 0.19 to 0.03 and for light smutty wheat from 6 to 2. FGIS also proposed to revise the foreign material breakpoint for U.S. No. 3 from 0.5 to 0.4. In addition, FGIS proposed to revise the breakpoint for wheat dockage from 0.20 to 0.2.

The Japanese Food Agency opposed the proposal to revise the breakpoint for wheat dockage because they were concerned that the change may lead to inferior quality wheat. An association representing grain handlers commented that the proposed 0.03 breakpoint for ergot was unreasonable and operationally impractical. They further commented that they recognize that some reduction in the ergot breakpoint is appropriate to accommodate the lower grade of 0.05 percent but did not suggest an alternative to the proposed breakpoint.

FGIS evaluated these comments and concluded that revising the dockage breakpoint from 0.20 to 0.2 will not affect the level of dockage found in wheat. This revision promotes uniform recording procedures for factors certified to the nearest tenth percentage point. FGIS also concluded that the proposed 0.03 ergot breakpoint sufficiently assures ergot levels within the 0.05 percentage point limit. This proposed limit provides the exporter with an operating range which allows a tolerance of up to 60 percent from the 0.05 percentage point limit. FGIS further believes that a 0.03 ergot breakpoint will not affect the loading efficiency of export elevators since ergot is seldom found in wheat.

Based on the comments received and issues discussed, FGIS will revise the breakpoints for ergoty wheat from 0.19 to 0.03, for the U.S. No. 3 foreign material limit from 0.5 to 0.4, and for wheat dockage from 0.20 to 0.2. FGIS is also revising the breakpoint for light smutty wheat from 6 to 3 as a result of the revised special grade limit established at more than 5 smut balls.

Miscellaneous Comments

Some commentors provided views and opinions on matters other than the specific proposed actions. These comments addressed establishing weight limits instead of count limits for U.S. Sample grade criteria, establishing grade limits for insect-damaged kernels, reducing grade limits for shrunken and broken kernels, and reporting sprout damage on the inspection certificate if it is equal to or greater than 1.0 percent. FGIS evaluated these concerns and is providing a general discussion for each.

One commentor, representing grain handlers, recommended expressing all U.S. Sample grade tolerances as a percentage of the sample weight rather than by a count. The comment suggested this change would ensure consistency of the grade determinations by replacing qualitative judgment with quantitative analysis. To address this comment, FGIS reviewed historical files regarding the establishment of U.S. Sample grade criteria which are based on a count. The criteria include animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. These U.S. Sample grade factors were included in the wheat standards as noted in the November 1, 1968, final rule (33 FR 16065) and were effective January 31, 1969. On April 27, 1976, the **Federal Register** published proposed revisions to the wheat standards (41 FR 17553). One proposed action included revising the definition of U.S. Sample grade to coincide with defect action levels established by the Food and Drug Administration (FDA). FDA action levels for commonly recognized harmful or toxic substances are established on a count basis. The June 29, 1976, final rule (41 FR 26670) implemented these revisions effective May 1, 1977.

FGIS believes uniformity of standards between Federal agencies is very important in order to prevent confusion and disruption within the grain marketing system. Therefore, the current method of reporting U.S. Sample grade factors on a count basis is appropriate since it best reflects the action levels established by FDA.

One commentor, representing the flour milling industry, recommended establishing grade limits for insect-damaged kernels, reducing grade limits for shrunken and broken kernels, and reporting sprout damage on the inspection certificate if it is equal to or greater than 1.0 percent.

The commentor recommended establishing separate grade limits for insect-damaged kernels because, in the commentor's opinion, the current U.S. Sample grade criteria of 32 or more kernels in a 100-gram sample does not reflect current market practice. The commentor indicated purchasing specifications typically reject any wheat containing 5 to 7 insect-damaged kernels. For these reasons, the commentor suggested the following grade limits based on either a count or a percentage basis.

RECOMMENDED GRADE LIMITS FOR INSECT-DAMAGED KERNELS

Grade	Number of Kernels	Maximum percent limit
1	6	0.2
2	6	.2
3	16	.5
4	32	1.0
5	32	1.0

FGIS does not believe it is appropriate to establish separate grade limits for insect-damaged kernels for the following reasons. General research determined that the interrelationships between FDA defect action levels for insect-damaged kernels in wheat and FDA defect action levels in flour found little correlation between insect-damaged kernel levels and insect fragments in flour. The research concluded that the flour miller cannot rely on the percent or the number of insect-damaged kernels in wheat as a predictor of the number of insect fragments found in the subsequent flour. The research further demonstrated the correlation between the number of insect-damaged kernels and corresponding weight is questionable. Although some research indicates 32 insect-damaged kernels per 100 grams of wheat is comparable to approximately 1 percent damage; other research indicates it could take as much as 101 insect-damaged kernels to obtain approximately 1.1 percent damage (3). Furthermore, insect-damaged kernels as it correlates to insect fragments in flour is a concern only to domestic flour mills. Export contracts do not include similar requirements.

Although FGIS did not propose and is not establishing separate grade limits for insect-damaged kernels, flour millers may request the certification of the actual number of insect-damaged kernels found in a sample. This information should assist the miller in determining if a wheat lot meets the acceptance level established in the purchase specification.

The same commentor recommended reducing grade limits for shrunken and broken kernels. The commentor indicated small and shriveled kernels greatly affect the milling quality of wheat. Although quantitative effects of shrunken and broken kernels on milling quality were not provided with the comment, the commentor suggested the following grade limits:

RECOMMENDED GRADE LIMITS FOR SHRUNKEN AND BROKEN KERNELS

Grade	Maximum percent limits	
	Current	Suggested
1	3.0	1.0
2	5.0	3.0

RECOMMENDED GRADE LIMITS FOR SHRUNKEN AND BROKEN KERNELS—Continued

Grade	Maximum percent limits	
	Current	Suggested
3	8.0	5.0
4	12.0	8.0
5	20.0	12.0

FGIS has requested the Agricultural Research Service to develop a practical test to predict milling yield and/or performance. FGIS believes the development implementation of a highly-correlated objective test to predict milling performance addresses the commentor's concern and is in the best interest of the wheat industry. Therefore, FGIS is addressing this commentor's concerns through research and welcomes any available information regarding the effects of shrunken and broken kernels on milling yield to assist in the development of a test.

Another concern expressed by this commentor involved reporting the percentage of sprout damage on the inspection certificate. The commentor indicated the presence of sprout damage is detrimental to the wheat's end use for some products. The commentor suggested reporting the actual percentage of sprout damage on the inspection certificate whenever the sprout damage level is equal to or greater than 1.0 percent. This 1.0 percent reporting threshold was recommended to reduce an unnecessary reporting burden to the inspection system while providing the milling industry with important quality information.

FGIS agrees that sprout damage could affect the end-use value of wheat. This is demonstrated by some purchase specifications which restrict the maximum allowable levels to 0.0, 0.2, and 0.5 percentage points. The national inspection system, however, already provides certification procedures for reporting the actual levels of sprout damage, as well as other types of damage, in wheat. Due to the vastly different needs of end users, FGIS has determined it is best to provide this information on a request basis and not as a mandatory reporting requirement. Certificating this additional information upon request provides for an efficient and cost-effective inspection service which meets the demands of every end user. Therefore, FGIS does not plan to revise the sprout damage reporting provision as suggested by the comment.

Final Action

On the basis of these comments and other available information, FGIS has decided to enact the changes as proposed with the exception of the elimination of the aggregate weight criteria for stones and the minimum criteria for smut balls for light smutty wheat. Rather than eliminating the aggregate weight criteria as proposed, FGIS has decided to reduce the aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight. FGIS has also decided to revise the light smutty wheat criteria for smut balls from more than 2 smut balls as proposed to more than 5 smut balls.

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgement of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revisions become effective May 1, 1993, to coincide with the beginning of the 1993 crop year. These changes will facilitate domestic and export marketing of grain.

References

(1) Wiese, M.V., Compendium of Wheat Diseases, 1977.

(2) Christensen, C.A., and R.A. Meronuck, Quality Maintenance in Stored Grains & Seeds, 1986.

(3) Wingfield, J., and J. Pedersen, Insect Fragment Levels in Flour Milled from Selected Commercial Wheat Blends, prepared for the Millers' National Federation, August, 1984.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.86(c)(2), Tables 23 and 24 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 23.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

Grade	Minimum limits of—				Maximum limits of—											
	Test weight per bushel				Damaged kernels								Wheat of other classes[4]			
	Hard red spring wheat or white club wheat[1] (pounds)		All other classes and subclasses (pounds)		Heat-damaged kernels (percent)		Total[2] (percent)		Foreign material (percent)		Shrunken and broken kernels (percent)		Defects[3] (percent)		Contrasting classes (percent)		Total[5] (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	58.0	–0.3	60.0	–0.3	0.2	0.2	2.0	1.0	0.4	0.2	3.0	0.3	3.0	0.7	1.0	0.7	3.0	1.6
U.S. No. 2	57.0	–0.3	58.0	–0.3	0.2	0.2	4.0	1.5	0.7	0.3	5.0	0.4	5.0	0.9	2.0	1.0	5.0	2.1
U.S. No. 3	55.0	–0.3	56.0	–0.3	0.5	0.3	7.0	1.9	1.3	0.4	8.0	0.5	8.0	1.2	3.0	1.3	10.0	2.9
U.S. No. 4	53.0	–0.3	54.0	–0.3	1.0	0.4	10.0	2.3	3.0	0.6	12.0	0.6	12.0	1.4	10.0	2.3	10.0	2.9
U.S. No. 5	50.0	–0.3	51.0	–0.3	3.0	0.7	15.0	2.7	5.0	0.7	20.0	0.7	20.0	1.5	10.0	2.3	10.0	2.9

[1] These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.3
Garlicky	More than 2 bulblets per 1,000 grams.	1⅓
Light smutty	More than 5 smut balls per 250 grams.	3
Smutty	More than 30 smut balls per 250 grams.	10
Infested	Same as in § 810.107	0
Ergoty	More than 0.05%	0.03
Treated	Same as in § 810.2204	0
Dockage	As specified by contract or load order grade.	0.2
Protein	As specified by contract or load order grade.	0.5
Class and Subclass		
Hard red spring:		
DNS	75% or more DHV	–5.0
NS	25% or more DHV but less than 75% DHV.	–5.0
Durum:		
HADU	75% or more HVAC	–5.0
ADU	60% or more HVAC but less than 75% of HVAC.	–5.0

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Soft white:		
SWH	Not more than 10% white club wheat.	2.0
WHCB	Not more than 10% of other soft white wheat.	2.0
WWH	More than 10% WHCB and more than 10% of other soft white wheat.	–3.0

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for part 810 continues to read as follows:

Authority: Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart M—United States Standards for Wheat

4. Section 810.2202(a)(7) is revised to read as follows:

§ 810.2202 Definition of other terms.

(a) * * *

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes any wheat which is other than red or white in color.

* * * * *

5. Section 810.2204(a) is revised to read as follows:

§ 810.2204 Grades and grade requirements.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	58.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels.					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Total[1]	3.0	5.0	8.0	12.0	20.0
Wheat of other classes:[2]					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total[3]	3.0	5.0	10.0	10.0	10.0
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other material:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substance	3	3	3	3	3
Total[4]	4	4	4	4	4
Insect-damaged kernels:					
In 100 grams	31	31	31	31	31

U.S. Sample grade is Wheat that:
(a) does not meet the requirements for U.S. Nos. 1, 2, 3, 4, or 5; or
(b) has a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or
(c) is heating or of distinctly low quality.

[1] Includes damaged kernels (total), foreign material, shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substance.

* * * * *

6. Section 810.2205 paragraphs (a) and (c) are revised to read as follows:

§ 810.2205 Special grades and special grade requirements.

(a) *Ergoty wheat.* Wheat that contains more than 0.05 percent of ergot.

* * * * *

(c) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains, in a 250-gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 5 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

* * * * *

Dated: November 3, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–30198 Filed 12–11–92; 8:45 am]

BILLING CODE 3410–EN–M

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7 CFR Parts 800 and 810

RIN 0580–AA10

United States Standards for Sorghum

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the United States Standards for Sorghum to (1) reduce the maximum "broken kernels and foreign material" (BNFM) limits for U.S. No. 2 sorghum by 1 percent and U.S. Nos. 3 and 4 sorghum by 2 percent; (2) establish grade limits for foreign material; (3) reduce the amount of Brown sorghum allowed in Yellow sorghum from 10.0 percent to 3.0 percent; (4) modify the classification terminology for the classes Yellow and Brown sorghum; and (5) revise the definitions for all classes of sorghum. FGIS is also revising inspection plan tolerances for sorghum based on these changes.

EFFECTIVE DATE: June 1, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telephone (202) 720–0292; Fax (202) 720–4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580–0013.

Effective Date

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become

effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest these amendments become effective less than one calendar year after promulgation. Accordingly, this final rule will be effective on June 1, 1993, in order to be in effect for the 1993 crop year. These changes will facilitate domestic and export marketing of sorghum.

Final Action

On April 2, 1991, FGIS proposed in the **Federal Register** (56 FR 13420) to revise the U.S. Standards for Sorghum by (1) separating the grading factor "broken kernels, foreign material, and other grains" (BNFM) into two factors "broken kernels" (BN) and "foreign material" (FM); (2) reducing the amount of Brown sorghum allowed in Yellow sorghum; (3) modifying the classification terminology for the classes Yellow and Brown sorghum; (4) revising the definitions for all classes of sorghum; and (5) requiring dockage to be reported to the nearest tenth percent rather than whole percents with fractions disregarded.

During the 60 day comment period ending June 3, 1991, FGIS received a total of 29 comments from the various segments of the sorghum industry including producers, end-users, handlers, academicians, and official inspection agencies.

On the basis of these comments and other available information, FGIS has decided to enact the changes as proposed with the exception of the dockage and BNFM proposal.

FGIS is investigating alternative options regarding dockage determination, reporting, and certification and will solicit public comment at a later date. Meanwhile, FGIS will continue to report dockage to the whole percent and disregard any fraction.

Rather than separating BNFM into BN and FM and establishing separate limits for each, FGIS has decided to establish grade limits for FM as a subfactor of BNFM and retain BNFM as a grade determining factor for sorghum.

BN and FM

FGIS proposed to separate the grading factor BNFM into two factors, BN and FM and reduce the combined limits for BN and FM in grades 2, 3, and 4. Twenty-three commentors supported or generally supported and six opposed the proposed action.

Supporters of the proposal are encouraged by the fact that sorghum customers will know precisely how much foreign material they are receiving, thereby dispelling the perception some buyers have that BNFM is predominately or exclusively FM. They also believe the proposed action will promote the marketing of cleaner, more consistent quality sorghum and will provide more complete information regarding the end-use value of the sorghum. Supporters further believe the combination of more consistent quality sorghum and greater end-use value information will encourage domestic and foreign buyers to consider sorghum in their grain buying decisions.

Opponents are concerned that the proposal would disadvantage certain geographical locations and inflict significant economic losses on producers and handlers without improving the Nation's competitive position in the world market. They explained that many sorghum handling facilities are not equipped to clean sorghum and if enacted, the proposal could force facilities to retrofit existing operations to meet the separate BN and FM grade limits. Furthermore, they contended that dealing with two separate factors rather than one combined factor could inhibit handling efficiency. Opponents conclude that the cost of retrofitting and the reduced operational efficiency far exceed the benefits that may result from establishing separate BN and FM grading limits. Several commentors added that the market has not demonstrated any contractual interest in receiving separate BN and FM information or limiting the amounts of BN and FM currently being delivered. In fact, some handlers and merchants believe that enacting the proposal would result in a greater market demand for U.S. No. 3 sorghum and considerably less demand for U.S. No. 2 because price governs sales more so than quality.

While a consensus of the sorghum handlers oppose the idea of separating BN and FM, they do not necessarily oppose a reduction in the amount of BNFM permitted in the different numerical grades. One trade association commenting on the proposal believes the industry can economically support some tightening of the BNFM levels, but questions the rationale for such a reduction by stating that "lower limits should be based upon market demand and we don't believe that has been clearly established."

The current sorghum standards permit a wide range of BNFM in each grade. For example, the difference between the current U.S. No. 2 BNFM limit and that of U.S. No. 3 is 4 percentage points. Consequently, a buyer may receive one shipment of U.S. No. 2 sorghum containing only 4.1 percent BNFM and in the next shipment receive as much as 8 percent BNFM. This inconsistency in BNFM levels complicates end-use processing and represents a significant difference in product value.

During a 1989 grain sorghum research and utilization conference in Lubbock, Texas, end-users representing the feed, food, and industrial sectors of the sorghum industry expressed their concern over the levels and inconsistency of BNFM in sorghum. In the steam flaking process, high levels of BNFM interfere with the intact kernel's ability to absorb water. Broken kernel and foreign material absorb moisture at a faster rate which limits the amount of available moisture and impacts on the overall processing performance. In addition, processors and end-users are concerned because BNFM is a better media for mold, which could lead to mycotoxin production.

In reaching a final decision regarding BNFM, FGIS carefully considered the technical constraints and marketing concerns of the grain handlers and merchants. As stated earlier, those opposing separate BN and FM limits stated such action could threaten the efficiency with which the Untied States handles and markets sorghum and conceivably shift the quality preference of sorghum customers. FGIS believes changes to the sorghum standards must serve to improve market efficiency and encourage the production and delivery of high quality sorghum. FGIS' decision to retain BNFM as a grading factor and add a subfactor limit for FM should achieve these objectives.

BNFM will remain as a grade determining factor in sorghum with the limits for U.S. Nos. 2, 3, and 4 sorghum reduced to 7, 10, and 13 percent, respectively. The BNFM limit for U.S. No. 1 sorghum will remain at 4 percent. The corresponding FM fractions for grades 1 through 4 are established at 1.5, 2.5, 3.5, and 4.5 percent, respectively.

This new FM standard limits the amount of FM in BNFM for U.S. No. 2 sorghum to 35.7 percent; whereas, prior to this change, 100 percent of the BNFM could have been FM. Such a restriction is also comparable to the standards of other major sorghum exporters. Argentina, for instance, whose export standard is comparable to the current U.S. No. 2 BNFM standard, allows up to 5 percent BN and 3 percent FM. Therefore, 37.5 percent of the combined BNFM may be FM. Similarly, certain

Australian standards allow up to 50 percent of the BNFM to be FM.

The final decision to make FM a subfactor of BNFM rather than a separate factor alters the projected market impact discussed in the proposal. FGIS had estimated that the proposed rule to establish separate limits for BN and FM would have resulted in 77.4 rather than 100 percent of the export lots and 73.8 rather than 94.4 percent of the domestic lots receiving the U.S. No. 2 or better grade designation. These estimates were based on BNFM inspection data collected between 1987 and 1989 and assumed no immediate market reaction to lower actual BN and FM levels. FGIS's decision to place a restriction only on the levels of FM in the combined BNFM factor lessens the estimated market impact.

FGIS estimates this final rule will result in 91.4 and 87.6 percent of the export and domestic sorghum lots, respectively, continuing to receive the U.S. No. 2 or better grade designation. This compares with a current level of 99.9 and 95.7 percent for export and domestic sorghum lots, respectively. These new estimates are based on available inspection data collected between 1987 and 1991 and again assumes no immediate market reaction to lower actual BN and FM level.

It is impractical to speculate specific market reaction to the revised BNFM limits. If the market views these changes as positive, market changes could occur to create incentives for lower BNFM sorghum. That is, a market environment would evolve with greater price discrimination between low and high BNFM sorghum. If the new limits do not serve as an incentive to improve market efficiencies, the market will, through contractual arrangements, find a BNFM level that optimizes market performance. The revised limits are new parameters for describing sorghum quality which will serve as an incentive for members of the sorghum market at all levels to examine their operational and marketing practices and revise them as deemed necessary to improve market efficiency.

Based on comments received regarding the BNFM proposal and other available information, FGIS is revising the sorghum standards to:

(1) Reduce the BNFM limits for grades 2, 3, and 4; and

(2) Include FM as a subfactor with maximum limits under BNFM for each grade.

FGIS is taking this action to better reflect sorghum quality in the standards, to encourage the delivery of high quality sorghum, and to discourage the addition of foreign material and other grains to sorghum.

Dockage

To more accurately and precisely report dockage in sorghum, FGIS proposed the reporting of dockage to the nearest tenth percent, rather than whole percents with fractions being disregarded.

FGIS received mixed opinions regarding this proposal. In general, producers and academicians supported efforts to provide further quality information to the market. In contrast, the grain handlers and merchants were generally opposed to reporting dockage in tenths of a percent because it "could introduce a new variable in merchandising that would raise questions for our export customers * * *." In fact, several opponents directly or indirectly suggested that the term "dockage" be deleted from the sorghum standards and that the material currently defined as dockage be included in FM.

Based on available sorghum inspection data, dockage is not reported in 97 percent of the domestic sorghum lots and 99.9 percent of the export lots because it does not exceed 1 percent. Therefore, reporting dockage on each certificate may indeed prompt merchandisers to reevaluate the way in which sorghum is marketed. Furthermore, the two major export competitors, Argentina and Australia, do not make any distinction between BNFM and dockage.

However, FGIS has decided to investigate alternative options regarding dockage with a possible proposal for action at a later date. Therefore, no change is being made to the dockage procedures. Dockage will continue to be reported as a whole percent with any fraction of a percent disregarded.

Brown Sorghum Limits

FGIS proposed to reduce the amount of Brown sorghum allowed in Yellow sorghum from 10.0 percent to 3.0 percent. Twenty-six commentors supported the proposed action and two commentors did not have an opinion and one commentor felt the reduction was too dramatic stating that "any time you make a 70% adjustment, you either question the old standard or the new standard."

Yellow sorghum is generally considered to have approximately 95 percent of the nutritional value of corn (1, 2). However, the nutritional value of Brown (high-tannin) sorghum does not compare favorably to that of Yellow sorghum. Feeding trials have demonstrated that Brown sorghum can cause as much as a 30-percent reduction in feed efficiency when compared to Yellow sorghum, depending on the class of livestock being fed, the method of feeding, and other variables (1). Research has shown that the nutritional impact of feeding Brown sorghum depends on the level of tannin in the grain and the percent of the diet it comprises (3). At the present time, however, due to the variability of the tannin content among Brown sorghum varieties, it is impractical to assess the level which would effect feed efficiency. The intent of the proposed reduction of Brown sorghum limits is to assure U.S. sorghum customers of its relatively high nutritional value.

Brown sorghum accounts for approximately 2 percent of the total U.S. sorghum production. The potential for combining Brown sorghum with Yellow sorghum at unacceptable levels has hindered U.S. sorghum promotional efforts according to the Grain Sorghum Promotion Federation (GSPF), the market development entity of the National Grain Sorghum Producers Association (NGSPA). They indicate livestock feeders that have witnessed the animals' poor performance when fed the sorghum mixtures have become prejudiced against sorghum in general.

Although FGIS cannot establish the limit based on quantitative evidence regarding the effects on nutritional value, FGIS, believes that limiting the amount of Brown sorghum in Yellow sorghum to 3 percent will improve a buyer's confidence in the quality of U.S. sorghum by providing reasonable assurances to domestic and foreign customers that the sorghum will have approximately 95 percent the nutritional value of corn in livestock feed. Consequently, FGIS is amending the sorghum standards to reduce the amount of Brown sorghum allowed in Yellow sorghum, from 10.0 percent to 3.0 percent.

Class and Definition Terms

FGIS proposed to modify the classification terminology for the class Yellow and Brown sorghum to more clearly discriminate between the two classes. In addition, FGIS proposed to revise the definition for all classes of sorghum. Twenty-five commentors either supported or generally supported and four were silent on these issues.

The current classification system based on the visual appearance (color) of the kernel is confusing. The pericarp (seedcoat) colors of one class can also be observed in the other, with the exception of the brown pericarp. Only Brown sorghum has a brown pericarp, but, it is sometimes difficult to

distinguish the brown pericarps of the Brown sorghum varieties from the reddish-brown pericarps common to many Yellow sorghum varieties. A better distinction between the two classes is the presence of a pigmented testa (subcoat). The testa, which contains condensed tannins, is only present in Brown sorghum. It is the condensed tannins which are believed to be responsible for the nutritional effects associated with feeding Brown sorghum (1, 2). Consequently, to more distinctly define and isolate the two classes, FGIS is changing the class Brown sorghum to Tannin sorghum and revising the corresponding definition to include the words "pigmented testa" and "tannin."

The class Yellow sorghum, which includes more reddish-colored kernels than yellow colored kernels, creates some confusion in the marketplace. Due to the array of colors found in this class and the fact that the majority of the sorghum grown in the United States falls into this classification, FGIS is changing the class Yellow sorghum to Sorghum. Further, to communicate the fact that sorghum varieties within this class do not have a pigmented testa layer or the correspondingly high tannin levels, FGIS is revising the definition to reflect this information. It is important to note that although sorghum varieties without testa layers do not contain condensed tannins, the analytical methods employed for tannin analyses routinely report low-tannin levels due to the presence and measurement of other nontannin phenols (1). For this reason, definitions for the nontannin sorghum classes include a statement that they are low in tannin content.

While FGIS is retaining the classification terminology for White and Mixed sorghum, the definitions for these classes are being revised to coincide with the classification changes and revisions discussed above.

Inspection Plan Tolerances

Grain sorghum lots are inspected by a statistically based inspection plan. Inspection tolerances, commonly referred to as breakpoints (BP), are used to determine acceptable quality. As a result of the sorghum standards changes discussed above, some of the established breakpoints for sorghum require adjustment. Consequently, FGIS is revising section 800.86 (c)(2) of the regulations, tables 15 and 16, to reflect the corresponding changes/additions in the established inspection plan tolerances. The grade limits (GL) and BP for sorghum and the BP for sorghum special grades and factors are also revised.

Grade Chart Format

FGIS is revising the grade chart format in section 810.1404, Grades and grade requirements for sorghum, to improve the readability of the grade chart. In addition, section (b) of section 810.1404 is being revised and incorporated into the grade chart.

References

(1) Hahn, D.H., L.W. Rooney and C.F. Earp. Tannins and Phenols of Sorghum. Cereal Food World, 29:776–779, 1984.

(2) Rooney, L.W., M.E. Blakely, F.R. Miller, and D.T. Rosenow, 1980. Factors Affecting the Polyphenols of Sorghum and Their Development and Location in the Sorghum Kernel. Pages 25–35 in Proceedings, Symposium on Polyphenols in Cereals and Legumes, 36th Annual Meeting of the Institute of Food Technologists, St. Louis, Missouri.

(3) Fuller, H.L., Potter, D.K., and Brown, A.R. 1966. The Feeding Value of Grain Sorghums In Relation to Their Tannin Content. Univ. of Georgia, College of Agric. Exp.Stn. Bull., N.S. 176. 14pp.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*).

2. Section 800.86(c)(2), tables 15 and 16 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—							
			Damaged kernels				Broken kernels and foreign material			
			Heat-damaged (percent)		Total (percent)		Total (percent)		Foreign material (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	57.0	–0.4	0.2	0.1	2.0	1.1	4.0	0.3	1.5	0.3
U.S. No. 2	55.0	–0.4	0.5	0.4	5.0	1.8	7.0	0.4	2.5	0.4
U.S. No. 3[1]	53.0	–0.4	1.0	0.5	10.0	2.3	10.0	0.5	3.5	0.5
U.S. No. 4	51.0	–0.4	3.0	0.8	15.0	2.8	13.0	0.6	4.5	0.6

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Class Tannin.	Not less than 90.0%	–1.9
Sorghum	Not less than 97.0%	–1.0
White	Not less than 98.0%	–0.9
Smutty	20 or more in 100 grams	8
Infested	Same as in § 810.107	0

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS—Continued

Special grade or factors	Grade limit	Breakpoint
Dockage	0.99% and above	0.32
Moisture	As specified by contract or load order grade.	0.5

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart I—United States Standards for Sorghum

4. In § 810.1402, paragraph (i) is removed, paragraphs (j) and (k) are redesignated (i) and (j) and republished, and paragraphs (b) and (c) are revised to read as follows:

§ 810.1402 Definitions of other terms.

* * * * *

(b) *Broken kernels and foreign material.* The combination of broken kernels and foreign material as defined in paragraph (a) and (f) of this section.

(c) *Classes.* There are four classes of sorghum: Sorghum, Tannin sorghum, White sorghum, and Mixed sorghum.

(1) *Sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains less than 98.0 percent White sorghum and not more than 3.0 percent Tannin sorghum. The pericarp color of this class may appear white, yellow, pink, orange, red, or bronze.

(2) *Tannin sorghum.* Sorghum which is high in tannin content due to the presence of a pigmented testa (subcoat) and contains not more than 10.0 percent non-Tannin sorghum. The pericarp color of this class is usually brown but may also be white, yellow, pink, orange, red, or bronze.

(3) *White sorghum.* Sorghum which is low in tannin content due to the absence of a pigmented testa (subcoat) and contains not more than 2.0 percent sorghum of other classes. The pericarp color of this class is white or translucent and includes sorghum containing spots that, singly or in combination, cover 25.0 percent or less of the kernel.

(4) *Mixed sorghum.* Sorghum which does not meet the requirements for any of the classes Sorghum, Tannin sorghum, or White sorghum.

* * * * *

(i) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(j) *Sieves.*

(1) *1.98 mm (5/64 (0.0781) inches) triangular-hole sieve.* A metal sieve 0.81 mm (0.032 inches) thick with equilateral triangular perforations the inscribed circles of which are 1.98 mm (0.0781 inches) in diameter.

(2) *0.99 mm (2 1/2 /64 (0.0391) inches) round-hole sieve.* A metal sieve 0.81 mm (0.032 inch) thick with round holes 0.99 mm (0.0391 inches) in diameter.

5. Section 810.1403 is revised to read as follows:

§ 810.1403 Basis of Determination.

Each determination of broken kernels and foreign material is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and that portion of the broken kernels, and foreign material that will pass through a 1.98 mm (5/64 inches) triangular-hole sieve. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage, broken kernels, and foreign material removed by the 1.98 mm (5/64 inches) triangular-hole sieve.

6. Section 810.1404 is revised to read as follows:

§ 810.1404 Grades and grade requirements for sorghum.

Grading factors	Grades U.S. Nos.[1]			
	1	2	3	4
Minimum pound limits of:				
Test weight per bushel	57.0	55.0	53.0	51.0
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	5.0	10.0	15.0
Broken kernels and foreign material:				
Foreign material (part of total)	1.5	2.5	3.5	4.5
Total	4.0	7.0	10.0	13.0
Maximum count limits of:				
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	1	1	1	1
Stones[2]	7	7	7	7
Unknown foreign substance	3	3	3	3
Cockleburs	7	7	7	7
U.S. Sample grade is Sorghum that: (a) Does not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or (b) Has a musty, sour or commercially objectionable foreign odor (except smut odor); or (c) Is badly weathered, heating or distinctly low quality.				

[1] Sorghum which is distinctly discolored shall not grade higher than U.S. No. 3.
[2] Aggregate weight of stones must also exceed 0.2 percent of sample weight.

Dated: November 3, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–30200 Filed 12–11–92; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 92–25]

Receivership

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is removing its receivership regulation. The OCC presently makes an "insolvency" determination when placing a national bank into receivership. Effective December 19, 1992, statutory changes provide the OCC with new, additional grounds for appointing a receiver for a national bank. With these statutory changes, the OCC will no longer be required to make an "insolvency" determination; and the receivership regulation will no longer be necessary.

EFFECTIVE DATE: December 19, 1992.

FOR FURTHER INFORMATION CONTACT: Christina Trojan-Masnyk, Attorney, Corporate Organization and Resolutions Division, (202) 874–5300, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC has the authority to appoint a receiver for a national bank, under 12 U.S.C. 191, whenever the OCC becomes satisfied of its insolvency, after due examination of its affairs. Because insolvency is not defined in the statute, and to clarify the basis under which the OCC could appoint a receiver for a national bank, the OCC promulgated 12 CFR 5.49 (receivership regulation). This regulation defines two possible insolvency tests the OCC may consider in determining whether to appoint a receiver for a national bank. The receivership regulation defines a "net worth insolvency" test and a "liquidity insolvency" test. The receivership regulation notes that the OCC may also use alternate methods to determine whether a national bank is insolvent.

Effective December 19, 1992, 12 U.S.C. 191 is amended by section 133 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, 105 Stat. 2236 (December 19, 1991) (FDICIA). Section 133 of FDICIA provides the OCC, and the other Federal banking agencies, with uniform grounds for appointing either a conservator or a receiver. The grounds as specified in 12 U.S.C. 1821(c)(5) are:

(A) The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution [for a mutual institution].

(B) Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) An unsafe or unsound condition to transact business.

(D) Any willful violation of a cease and desist order which has become final.

(E) Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in 12 U.S.C. 1831o(b)) without Federal assistance.

(H) Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) Cause insolvency or substantial dissipation of assets or earnings;

(ii) Weaken the institution's condition; or

(iii) Otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund.

(I) The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) The institution ceases to be an insured institution.

(K) The institution is "undercapitalized" [1] and—

(i) has no reasonable prospect for becoming adequately capitalized (as defined);

(ii) fails to become adequately capitalized when required to do so under 12 U.S.C. 1831o(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to the appropriate agency within the time prescribed under 12 U.S.C. 1831o(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under 12 U.S.C. 1831o(e)(2).

(L) The institution—

(i) is "critically undercapitalized;" [2] or

(ii) otherwise has substantially insufficient capital. 12 U.S.C. 203(a) and 1821(c)(5).[3]

Some of these grounds are similar to, and have the same effect as, the net worth test and the liquidity test in the regulation. However, the amendment to 12 U.S.C. 191 makes the regulation unnecessary.

Administrative Procedure Act

The OCC is adopting this rulemaking as a final rule effective December 19, 1992. The OCC finds, pursuant to 5 U.S.C. 553(b)(B), that notice and public comment procedure is unnecessary and contrary to the public interest. The OCC finds that the public interest is best served through removing the receivership regulation at the same time that the new grounds for appointing a receiver for a national bank become effective. This simultaneous effective date will assure the least possible confusion regarding the basis under which a national bank may be placed into receivership and will avoid any unnecessary delays in permitting the OCC to take appropriate actions for the protection of depositors of a national bank. Because the changes to the grounds for appointing a receiver for a national bank are based on statutory amendments, and not merely changes in OCC policy on determining when to appoint a receiver, public comment on the grounds for appointment of a receiver is unnecessary and contrary to the public interest. Accordingly, the OCC finds that this decision is exempt from the notice and comment provisions

[1] "Undercapitalized" means the institution fails to meet any of the minimum required capital ratios established under 12 U.S.C. 1831o(b)(1)(C), as amended by section 131 of FDICIA.

[2] "Critically undercapitalized" means the national bank fails to meet any of the critical capital levels to be set by the OCC under 12 U.S.C. 1831o (b)(1)(E) and (c)(3)(A), as amended by section 131 of FDICIA. See 57 FR 44866, 44891 *et seq.* (September 29, 1992), to be codified at 12 CFR part 6, subpart A. For critically undercapitalized national banks, the OCC must generally appoint a receiver within 90 days, appoint a conservator within 90 days with the concurrence of the Federal Deposit Insurance Corporation (FDIC), or take other action which the OCC determines, with the concurrence of the FDIC, would better achieve the goal of increased capitalization at such bank, under 12 U.S.C. 1831o(g)(3), as amended by section 131 of FDICIA.

[3] The OCC may not appoint a conservator for a national bank under the last two grounds without the FDIC's consent, unless the OCC has given the FDIC 48 hours notice of the intention and the grounds therefor. 12 U.S.C. 1821(c)(11).

of the Administrative Procedure Act under 5 U.S.C. 553(b)(B).

For the reasons set forth above, good cause also exists for publication of this final rule less than 30 days before its effective date, pursuant to 5 U.S.C. 553(d)(3). In addition, a delayed effective date would result in the continued existence of a regulation which has been superseded, and rendered ineffective, by a statutory change.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rulemaking, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

Executive Order 12291

The OCC has determined that this rulemaking is not a "major rule" as defined in Executive Order 12291, and it therefore does not require a Regulatory Impact Analysis. This action is required to give effect to statutory changes and is not expected to have any material effect on a national bank.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 5—[AMENDED]

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 5.49 [Amended]

2. Part 5 is amended by removing § 5.49.

Dated: October 14, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–30191 Filed 12–11–92; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–14–AD; Amendment 39–8438; AD 92–27–05]

Airworthiness Directives; Piper Aircraft Corporation PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Piper Aircraft Corporation (Piper) PA–31 series airplanes. This action requires painting the color red on the aileron balance cable and the bellcrank lug of both aileron control systems. The Federal Aviation Administration (FAA) has received several reports of improper connections of the aileron control systems on the affected airplanes. The actions specified by this AD are intended to prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane because the left and right ailerons could only move in the same direction.

EFFECTIVE DATE: January 29, 1993.

ADDRESSES: Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper PA–31 series airplanes was published in the **Federal Register** on July 15, 1992 (57 FR 31341). The action proposed painting the color red on the aileron balance cable and the bellcrank lug on both aileron control systems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter recommends that the compliance time be changed to the next annual inspection instead of within the next 100 hours time-in-service because, if the airplane is currently flying, it is safe to assume that the aileron cables are properly connected. The FAA concurs that, if the airplane is currently flying, then the aileron cables are properly connected, and that under these circumstances, the next 100 hours TIS is not a justifiable compliance time. The FAA has determined that, because of the nature of this situation and the operator-need for flexibility in accomplishing the required actions, the compliance time should be changed to the next time the aileron cables are disconnected for any reason, but not later than 12 calendar months from the effective date of the AD. The proposed AD has been revised to reflect this change in the compliance time.

No comments were received on the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the compliance time revision described above and minor editorial corrections. The FAA has determined that the revision and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 3,361 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $20 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $272,325.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

92–27–05 Piper Aircraft Corporation: Amendment 39–8438; Docket No. 91–CE–14–AD.

Applicability: PA–31 Series airplanes (all models and serial numbers), certificated in any category. Compliance: Required the next time the aileron cables are disconnected for any reason, but no later than 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane, accomplish the following:

(a) Using red enamel paint, color code the aileron balance cable and the bellcrank lug of both aileron control systems in accordance with Figure 1 of this AD.

BILLING CODE 4910–13–M

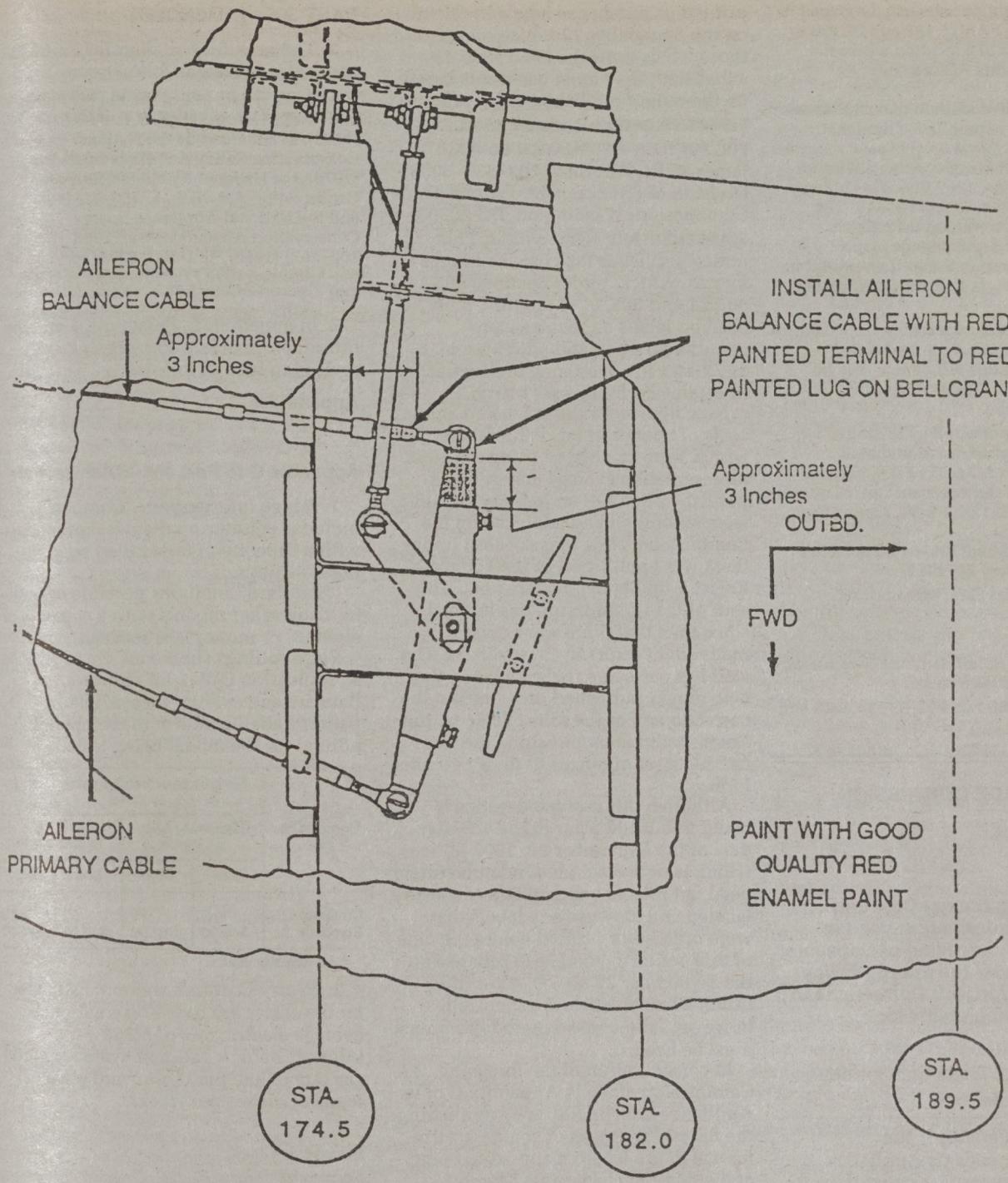


FIGURE 1

VIEW LOOKING THRU TOP WING SKIN (LEFT WING)
RIGHT WING OPPOSITE

BILLING CODE 4910-13-C

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may examine any information that is applicable to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–8438) becomes effective on January 29, 1993.

Issued in Kansas City, Missouri, on December 8, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30226 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Corrections to Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by issuing corrections to the ranges of comparability used on required labels for dishwashers that were published on September 22, 1992.[1] Properly labeled dishwashers manufactured prior to the effective date of this notice (including dishwashers labeled in accordance with the ranges published on September 22, 1992) need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised. Those manufacturers who have already printed or purchased labels in reliance on the September 22 notice may use those labels until the label stock is exhausted; they must use labels based on the ranges published today after that.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This notice publishes the corrected range figures, which, under Sections 305.10, 305.11 and 305.14 of the rule, must be used on labels on dishwashers manufactured on and after March 15, 1993. and in advertising of dishwashers in catalogs printed after March 15, 1993.

New figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1992 representative average energy costs published by DOE on January 14, 1992,[2] were submitted and analyzed by the Commission. New ranges based upon them were published in the **Federal Register** on September 22, 1992. The staff of the Commission has learned since then that there were several inadvertent errors in those ranges. The staff has corrected the errors, and the new ranges published today reflect the corrections. For the sake of clarity, the Commission is republishing the complete set of ranges in their corrected form.

Although this corrected notice is being published prior to the effective date of the September 22, 1992 notice, which is now rescinded, manufacturers need not relabel any appliances already labeled and may use any labels that were ordered or printed before the date of this notice in good faith reliance on the September 22 notice. After this initial stock of labels is exhausted, however, labels based on today's notice must be used.

In consideration of the foregoing, the Commission amends Appendix C of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning March 15, 1993.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

[1] 57 FR 43611.

[2] 57 FR 1461. The cost for electricity was published as 8.25 cents per kilowatt-hour; for natural gas: 58 cents per therm; for propane: 74 cents per gallon; for No. 2 heating oil: $1.03 per gallon.

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendix C, Paragraph 1 and the introductory text in Paragraph 2 are revised to read as follows:

Appendices

* * * * *

Appendix C to Part 305—Dishwashers

1. *Range Information:* "Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DW–1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

Ranges of Comparability	Ranges of estimated yearly energy costs			
	Electrically heated Water		Natural gas heated Water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$46.00	$82.00	$25.00	$46.00

[1] No data submitted.

2. *Yearly Cost Information:* Estimates on the scales are based on a national average electric rate of 8.25¢ per kilowatt hour, a national average natural gas rate of 58¢ per therm, and eight loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 92–30302 Filed 12–11–92; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Regulation of Domestic Exchange-Traded Commodity Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is deleting regulations which require boards of trade designated as contract markets for options to adopt rules requiring member futures commission merchants ("FCMs") that engage in the offer or sale of commodity options regulated under part 33 to send copies of customer complaints and their resolutions and copies of all promotional material to the members' designated self-regulatory organization ("DSRO"). The purpose of this deletion is to eliminate duplicative recordkeeping requirements affecting FCMs.

EFFECTIVE DATE: January 13, 1993.

FOR FURTHER INFORMATION CONTACT: Tobey Kaczensky, Assistant Deputy Director, Audit and Review Section, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-8246.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, the Commission published for comment a proposal to delete provisions of Regulation § 33.4 which require boards of trade designated as contract markets for options to adopt rules requiring member FCMs that engage in the offer or sale of commodity options to forward customer complaints and the resolutions thereof, and copies of all promotional material, to the member's self-regulatory organization. Commission Regulation § 33.4(b)(4)(i) will continue to require that boards of trade require member FCMs to retain all options complaints. In addition, Regulation § 33.4(b)(ii) will continue to require that boards of trade adopt and retain rules which require each FCM to make a record of the date the complaint was received, the associated person who serviced, or the introducing broker who introduced the account, a general description of the matter complained of, and what, if any, action was taken by the FCM in regard to the complaint.

The provisions to be deleted date from the Commission's pilot program for the reintroduction of domestic exchange-traded options. At that time, the Commission was concerned that the history of customer abuses that marked the previous trading of commodity options not be repeated. Thus, the Commission imposed certain requirements on the exchanges in an effort to guard against fraud in the offer and sale of exchange-traded options on commodity futures. The pilot program has since been terminated. Based on its experience with the administration of the options pilot program for ten years, the Commission recently reassessed the need for some of the differential sales practice and monitoring imposed on options, and as a result determined to eliminate some provisions of the options designation requirements.[1]

In light of the activities of the Joint Audit Committee ("JAC"), which is responsible for, among other things, coordinating the self regulatory organizations' audit and financial surveillance programs, including futures and options sales compliance audit procedures, the Commission believes that the exchanges and the National Futures Association (NFA) can be given some flexibility in meeting their affirmative action compliance obligations. It should be noted that the JAC's program for FCM audits includes a review of options, customer complaints and promotional material. In addition, NFA Rule 2-29 sets standards for promotional material and provides certain circumstances under which NFA may review such material.

The Commission believes that the elimination of the regulations described will reduce duplicative reporting requirements without significantly reducing customer protection. The staff will monitor through rule enforcement reviews the review of complaints and promotional material.

II. Related Matters

A. Notice and Comment

The Commission's proposal to delete Regulations § 33.4(b)(4)(iii) and (b)(8) was published in the **Federal Register** (57 FR 40626) on September 4, 1992 for 30 days comment.

Comments in support of the proposed deletions were received from two exchanges, the Chicago Board of Trade (CBOT) and the Chicago Mercantile Exchange (CME); from the Futures Industry Association (FIA); from the National Futures Association (NFA), and from Prudential Securities, Inc. (Prudential). There were no comments filed which opposed deletion.

The commenters uniformly stated that they believed the regulations require unnecessary recordkeeping by DSROs (FIA, CBOT, CME) and are duplicative. With regard to Regulation § 33.4(b)(4)(iii), NFA emphasized that, for those FCMs for which it serves as the DSRO, its compliance staff routinely reviews written customer complaints during audits of those FCMs. NFA stated that it is sent customer complaints directly by customers,[2] and that it reviews promotional material during on-site audits of FCMs, and also promotional material which is submitted pursuant to NFA Rule 2-29. Thus, NFA's present system assures review of both customer complaints and promotional material absent the regulatory requirements which the Commission has deleted.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5. U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These proposed deletions will permit contract markets to change rules affecting FCMs and thereby to relieve a regulatory burden. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[3] The Commission has previously determined that contract markets and registered FCMs are not small entities for the purpose of the RFA. Therefore, the deletions would not have a significant economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act the Commission has submitted these proposed deletions to the Office of Management and Budget. These proposed deletions have no burden.

List of Subjects in 17 CFR Part 33

Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, section 4(b) of said Act, the Commission amends part 33 of title 17 of the Code of Federal Regulations as follows:

[1] For background, see generally 56 FR 43694 (September 4, 1991).

[2] Those customers who have major complaints about an FCM are unlikely to send the complaint to the firm because the firm is the source of the problem. Thus, they direct their complaint to the self-regulatory entity for the industry, which is the NFA.

[3] 47 FR 18618-18621 (April 30, 1962).

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

§ 33.4 [Amended]

2. Section 33.4(b)(4)(iii) is removed.

§ 33.4 [Amended]

3. Section 33.4(b)(8) is removed and reserved.

Issued in Washington, DC, this 8th day of December, 1992, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30136 Filed 12–11–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket Nos. RM87–5–011 and CP87–238–002; Order No. 497–D]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines and Ozark Gas Transmission System; Order on Remand and Extending Sunset Date

Issued December 4, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order on remand and extending sunset date.

SUMMARY: This order addresses on remand an opinion of the U.S. Court of Appeals for the District of Columbia Circuit which upheld in substantial part the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing affiliates. The court also remanded for further consideration the Commission's extension of the rule's contemporaneous disclosure requirement to gas sales and marketing information. The Commission's order narrows the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. The Commission's order also addresses whether the marketing affiliates rule should be applicable to the operations of Ozark Gas Transmission Company. Finally, the Commission's order extends the sunset date of the rule's reporting requirements to December 31, 1993.

EFFECTIVE DATE: This order is effective January 13, 1993.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

ORDER ON REMAND AND EXTENDING SUNSET DATE

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

On July 21, 1992, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Tenneco Gas* v. *Federal Energy Regulatory Commission (Tenneco)*,[1] upholding in substantial part Order Nos. 497 and 497–A,[2] the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. However, the court found that the Commission did not adequately justify its extension of the contemporaneous disclosure requirement of § 161.3(f)[3] to gas sales and marketing information. Further, in its review of *Ozark Gas Transmission System (Ozark)*,[4] a consolidated case, the court found that the Commission erred in finding Order No. 497 applicable to Ozark Gas Transmission System (Ozark), a joint venture. Accordingly, the court remanded the proceeding to the Commission. In response to the court's remand, this order revises § 161.3(f) to narrow the scope of the contemporaneous disclosure requirement with respect to sales and marketing information, and finds that Ozark is subject to the requirements of Order No. 497. In addition, this order extends the sunset date of Order No. 497's reporting requirements from December 31, 1992, until December 31, 1993. However, 90 days after the Commission has determined that an individual pipeline is in full compliance with Order No. 636, the pipeline will no longer be required to submit the affiliated transportation log (FERC Form 592) to the Commission.[5] The pipeline must continue to maintain[6] and to provide its affiliated transportation log information on its electronic bulletin board (EBB).[7]

II. Public Reporting Burden

Since certain categories of gas sales and marketing information will be eliminated from § 161.3(f), the amount of information that a pipeline must contemporaneously disclose will be reduced. However, the reporting burden

[1] 969 F.2d 1187 (DC Cir. 1992). Parties had the opportunity to seek rehearing of the court's decision until September 4, 1992, but no petitions for rehearing were filed.

[2] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), order on rehearing, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), order extending sunset date, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), order extending sunset date and amending final rule, Order No. ¶ 30,934 (1991), reh'g denied, 57 FR 5815, 58 FERC ¶ 61,139 (1992), aff'd in part and remanded in part, *Tenneco Gas* v. *FERC*, No. 89–1768 (DC Cir. July 21, 1992).

[3] 18 CFR 161.3(f).

[4] 49 FERC ¶ 61,247 (1989).

[5] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992) III FERC Stats & Regs. Preambles ¶ 30,939 (April 8, 1992) (Order No. 636), order on reh'g, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992).

[6] 18 CFR 250.16(a)(3) (1992).

[7] In Order No. 636, the Commission created new regulations which, *inter alia*, require all interstate pipelines transporting pursuant to part 284 of the Commission's regulations to create and maintain EBBs. See § 284.8(b)(4) and § 284.9(b)(4), 57 FR 13267 (April 16, 1992). Once operational, the EBB would become a pipeline's tool for compliance with Order No. 497's 24-hour electronic information requirement. See 18 CFR 250.16(g)(2) (1992).

will remain the same because such information is not reported on FERC Form No. 592. The Office of Management and Budget (OMB) approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1992.

The current annual reporting burden for collection of information, as revised in order No. 636, is estimated to be 7,882 hours for FERC Form No. 592 (1902–0157). The industry burden is based on an estimated average of 9.94 hours per filing for the 61 respondents to complete 793 filings of FERC Form No. 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining the data needed, and completing and reviewing the collection of information. Exemption from the requirement to file Form No. 592 90 days after full compliance with Order No. 636 should result in a reduction of the number of respondents.

Hard copy and/or electronic formats for any data collection required by this order may be obtained by contacting: La Dorn Systems Corporation, in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

III. Background

On June 1, 1988, the Commission issued Order No. 497,[8] a final rule in this proceeding, which was the result of a lengthy rulemaking proceeding[9] begun in response to petitions for rulemaking[10] and several cases that raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates.[11] The final rule in Order No. 497 adopted standards of conduct, codified at part 161 of the Commission's regulations,[12] and reporting requirements, codified at § 250.16 of the Commission's regulations,[13] intended to prevent the preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services. The final rule also adopted a sunset provision of December 31, 1989, for the reporting requirements of Order No. 497 and specifically reserved the Commission's right to extend the date should the Commission decide there was a need to do so.

On December 15, 1989, the Commission issued Order No. 497–A[14] which granted partial rehearing of Order No. 497 and clarified certain provisions of the final rule. Order No. 497–A also extended the final rule's reporting requirements for an additional year, from December 31, 1989, to December 31, 1990, and stated that the Commission would examine the need to further extend the rule's reporting requirements prior to their sunset date of December 31, 1990.

On December 13, 1990, the Commission issued Order No. 497–B[15] which extended the sunset date of Order No. 497's reporting requirements for an additional year, from December 31, 1990, until December 31, 1991, because several issues regarding Order Nos. 497 and 497–A were pending. The issues included those raised in the protests of filings made by pipelines in response to the issuance of Order No. 497, the applicability of the standards of conduct to discount sales programs, as well as the appeal to the United States Court of Appeals for the District of Columbia Circuit.

On December 20, 1991, the Commission issued Order No. 497–C[16] which extended Order No. 497's reporting requirements for an additional year, from December 31, 1991, until December 31, 1992, and amended the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file. The Commission extended Order No. 497's reporting requirements for an additional year because certain issues regarding Order Nos. 497 and 497–A were still pending and a new issue had arisen. The issues still pending were the applicability of the standards of conduct to discount sales programs and the appeal of Order No. 497 to the United States Court of Appeals for the District of Columbia Circuit. The new issue was the proposal in the Notice of Proposed Rulemaking in Docket No. RM91–11–00[17] to require pipelines to comply with Order No. 497's standards of conduct and reporting requirements by considering their unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate. The Commission concluded that with these issues before it, it would be premature to let the reporting requirements lapse at the end of 1991.

On April 8, 1992, the Commission issued Order No. 636, a final rule in Docket No. RM91–11–000 which requires significant structural changes in the services provided by natural gas pipelines. Order No. 636 continues Order No. 497's standards of conduct for interstate pipelines with marketing affiliates. Order No. 636 also extends Order No. 497's standards of conduct and reporting requirements to transportation transactions where the pipeline provides unbundled gas sales service because the pipeline as a merchant would be the functional equivalent of a marketing affiliate.

On July 21, 1992, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Tenneco*, upholding in substantial part Order Nos. 497 and 497–A. However, the court found that the Commission did not adequately justify its extension of the contemporaneous disclosure requirement of § 161.3(f)[18] to gas sales and marketing information. The court stated that "[o]n remand the Commission should reconsider its justification for applying [the contemporaneous disclosure requirement of § 161.3(f)] to sales and marketing information and ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefitting consumers, as well as preventing undue discrimination."[19] In a related matter, the court also stated that "[a]pplying [the contemporaneous disclosure requirement of 161.3(f)] to released-gas information prior to the issuance of Order No. 497–A might well be

[8] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988).

[9] The proceeding included a Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines issued November 14, 1986, 51 FR 41982 (Nov. 20, 1986), IV FERC Stats. & Regs. ¶ 35,520 (1986), and a Notice of Proposed Rulemaking Related to Marketing Affiliates of Interstate Pipelines issued June 2, 1987, 52 FR 21578 (June 8, 1987), FERC Stats. & Regs. [Proposed Regulations 1982–1987] ¶ 32,445 (1987).

[10] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86–19–000, Minnesota Department of Public Service, Energy Issues Intervention Office in Docket No. RM87–1–000, and Shell Gas Trading Company in Docket No. RM87–2–000.

[11] Northern Natural Gas Co., 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Co., 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,275 (1986) and 36 FERC ¶ 61,401 (1986); Texas Gas Transmission Corporation, 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., 37 FERC ¶ 61,011 (1986); and Tenneco Oil Co., *et al.*, 36 FERC ¶ 61,399 (1986).

[12] 18 CFR part 161.

[13] 18 CFR 250.16.

[14] Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989).

[15] Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990).

[16] Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815, 58 FERC ¶ 61,139 (1992).

[17] In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, 56 FR 38372 (Aug. 13, 1991), IV FERC Stats. & Regs. ¶ 32,480 (1991).

[18] 18 CFR 161.3(f).

[19] *Tenneco Gas* v. *FERC*, 969 F.2d 1187, 1201 (DC Cir. 1992).

fundamentally unfair" and that the Commission could avoid "the expense of litigation over this issue by announcing that it will not retroactively apply [161.3(f)] to released gas information."[20]

Further, in its review of *Ozark*, the court found that the Commission erred in finding Order No. 497 applicable to Ozark, a joint venture. Ozark is a partnership composed of subsidiaries of four natural gas pipelines, each of which has a 25 percent ownership and voting interest. Two of the owners have marketing affiliates. The court stated that the Commission failed to consider relevant evidence regarding the ability of the owner pipelines with affiliates to control the partnership.

IV. Discussion

Section 161.3(f) states that "[t]o the extent [a pipeline] provides to a marketing affiliate information related to transportation of natural gas, or gas sales or gas marketing it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system." In *Tenneco*, the court found that "the contemporaneous disclosure requirement—at least as it affects information regarding transportation, where pipelines have monopolistic market power—reflects a reasonable effort to promote a competitive market without significantly harming existing efficiencies."[21] However, with respect to the contemporaneous disclosure of gas sales and marketing information, the court stated that it was "unable to conclude that standard (f)'s application to sales and marketing is justified; nor can we be confident that FERC possessed the statutory authority to regulate the transfer of sales and marketing information from pipelines to their affiliates."[22] The court remanded the proceeding to the Commission and stated that "[o]n remand, the Commission should consider its justification for applying standard (f) to sales and marketing information and ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefitting consumers, as well as preventing undue discrimination."[23]

Based upon the court's opinion, and in light of the structural changes in the gas industry that will occur as a result of Order No. 636, the Commission will revise § 161.3(f) to narrow the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. Under revised standard (f), pipelines will still have to contemporaneously disclose information related to transportation of natural gas. However, with respect to information related to gas sales or marketing, pipelines will only be required to disclose information relating to sales or marketing on its system or the system of an affiliated pipeline. Accordingly, there will be two categories of gas sales or marketing information that will not be required to be contemporaneously disclosed: (1) gas sales or marketing information that is available from public sources and (2) information related to gas sales or marketing off a pipeline's system or the system of an affiliated pipeline. The Commission believes that a contemporaneous disclosure requirement revised in the manner discussed above is reasonably tailored to meet the its goals of improving the market and benefitting consumers, as well as preventing undue discrimination.

First, we will discuss the two categories of sales or marketing information that will be specifically excluded from the contemporaneous disclosure requirement of standard (f). The Commission believes that sales or marketing information that is available from public sources should not be required to be disclosed because that information will be available to all nonaffiliated shippers and potential shippers on a pipeline's system. The fact that the disclosure of this information by the pipeline to the marketing affiliate may give the affiliate an advantage over other potential shippers is irrelevant. As the court stated, "advantages a pipeline gives its affiliate are improper only to the extent that they flow from the pipeline's anti-competitive market power."[24] Moreover, one of the reasons the court gave for remanding standard (f) to the Commission for further explanation was that the standard, as currently written, "prohibits pipelines from sharing with their marketing affiliates information concerning potential marketing opportunities, even where that information was developed from public sources or sources entirely unrelated to a pipeline's transportation service."[25]

The Commission also believes that information related to sales or marketing off a pipeline's system, but not involving the system of an affiliated pipeline, should not be disclosed for several reasons. First, and most obvious, is that such sales or marketing information disclosed by the pipeline to the marketing affiliate will not involve the pipeline's transportation facilities, and, thus, there is no potential for a pipeline to exercise its monopoly power over the transportation facilities in a manner that would give an undue preference to its marketing affiliate. Second, and more importantly, is the role that off-system sales will play in pipelines' restructuring of their services. Under Order No. 636, pipelines will perform an effectively deregulated merchant function. As such, pipelines will seek to make sales both on and off system, an effort that may not necessarily involve their own transportation facilities with respect to off-system sales. In fact, pipelines may need to aggressively market their gas off-system if their current customers choose to only sign up for transportation services because otherwise they will be burdened with portfolios of wellhead contracts. If the pipelines do not shed their unwanted contracts, they could be subject to take-or-pay liability. The Commission believes that to require contemporaneous disclosure of information related to sales or marketing off system, but not involving the system of an affiliated pipeline, could have a chilling effect on pipelines marketing their gas.

While we are limiting the scope of standard (f), pipelines are not relieved of their obligations to refrain from unduly discriminatory conduct that is prohibited under the Natural Gas Act or the Natural Gas Policy Act, whether or not that conduct is covered by standard (f) or any of the other standards.

With respect to information relating to sales and marketing on a pipeline's system or the system of an affiliated pipeline, the Commission believes that information should continue to be disclosed for several reasons. First, any information obtained by the pipeline relating to sales and marketing on its system "flow[s] from the pipeline's anticompetitive market power."[26] The Commission's experience and common sense tell us that a pipeline has access to a great deal of information which it learns in the process of operating its transportation facilities. Its ongoing relationship with shippers on its line yields information on sales and marketing opportunities that are not readily available to others. A contemporaneous disclosure of information relating to sales and marketing on a pipeline's system is necessary because this type of

[20] *Id.* at 1202.
[21] *Id.* at 1199.
[22] *Id.* at 1199.
[23] *Id.* at 1201.
[24] *Id.* at 1201.
[25] *Id.* at 1200.
[26] *Id.* at 1201.

information naturally comes to the attention of a pipeline in connection with the transportation needed to get the gas from the point of availability to the market. The simple knowledge that there is a gas supply and a demand for gas in a particular location increases substantially in value when combined with information regarding potentially available transportation. The Commission believes that disclosing on-system sales or marketing information to an affiliate creates an undue preference because the affiliate would not have learned that information but for its relationship with the pipeline.

Second, the Commission believes that an undue preference would also be created in favor of a marketing affiliate if the pipeline gave it information concerning sales or marketing on the system of an affiliated pipeline. An illustration may be helpful:

> Acme Pipeline Company serves the southwestern United States and Apex Pipeline Company serves New England. Both pipelines are owned by the Double A Corporation and both are authorized to make unbundled firm or interruptible sales of gas throughout the country pursuant to § 284.284 of the Commission's regulations. In the course of business, Apex obtains information on a potential gas purchaser on its system which it will be unable to serve. Apex conveys this information to Acme. However, Acme is also unable to serve this potential customer. Acme, in turn, conveys this information to its marketing affiliate, Acme Gas Marketing, which does have gas supplies available to serve the customer on Apex's pipeline in New England.

In this situation, the pipeline would not have learned this information but for its membership in a corporate family with the affiliated pipeline. Further, as discussed above, the marketing affiliate would not have learned of the sales and marketing information but for its relationship with the pipeline.

In a related matter, the court stated that applying standard (f) to released-gas information prior to the issuance of Order No. 497–A might well be fundamentally unfair and that the Commission could avoid the expense of litigation over this issue by announcing that it will not retroactively apply the standard to released gas information. Accordingly, the Commission will not retroactively apply the contemporaneous disclosure requirement of standard (f) to released gas information, that is, standard (f)'s application to released gas information would begin with the issuance of Order No. 497–A.

With respect to the issue of Order No. 497's applicability to Ozark, some general background is necessary. Ozark Gas Transmission System is a general partnership with four equal partners:

- Ozark Gas Pipeline Corporation, a wholly-owned subsidiary of Texas Oil and Gas Corporation, which, in turn, is a wholly-owned subsidiary of USX Corporation;
- Tennessee Ozark Gas Pipe Company, a wholly-owned subsidiary of Tennessee Gas Pipeline Company, which is, in turn, a wholly-owned subsidiary of Tenneco, Inc.;
- Columbia Gulf Transmission Company, a wholly-owned subsidiary of the Columbia Gas System, Inc.; and
- Caney River Transmission Company, a wholly-owned subsidiary of ONEOK, Inc.

TXO Production Company (TXO) and Tenngasco Corporation (Tenngasco) are shippers on Ozark's system. TXO is owned by Texas Oil and Gas Corporation and Tenngasco is owned by Tennessee Gas Pipeline Company. Thus, the parent companies of two of Ozark's partners have marketing affiliates who are shippers on the Ozark system. The Commission in its *Ozark* order stated that because the parent companies have a 25 percent interest in Ozark they are presumed to have control over Ozark. This finding was based on § 161.2 of the Commission's regulations [27] which states that "[a] voting interest of 10 percent or more creates a rebuttable presumption of control." The Commission found that the requirements of Order No. 497 were applicable to Ozark because "[t]he ownership of Ozark by common parent companies with the shippers raises the possibility that the companies may seek and potentially obtain a preference from Ozark on their behalf or on behalf of their marketing affiliates." [28]

In its opinion in *Tenneco* v. *FERC*, the court agreed with Ozark that the Commission failed to address record evidence which called into question the presumption of control, *i.e.*, the Ozark partnership agreement which states that, except in certain limited circumstances, the Ozark Management Committee may only act if there is unanimous approval by each of the partners, who each have one vote. The court stated:

> Without remarking at all on the unanimity requirement in the Ozark partnership agreement, FERC rushed to conclude that Ozark had failed to "rebut the presumption that the overlapping economic interests of its owners provide an incentive for the granting of a preference." *Ozark Gas Transmission System*, 49 FERC at 61,870. As we noted above, however, FERC's economic interest analysis is appropriate only after it has properly determined that "control" exists. Here, FERC articulated no findings on whether "control" existed and provided no explanation as to why Ozark's rebuttal evidence did not defeat the presumption of control.[29]

Accordingly, the court remanded for further proceedings consistent with its opinion.

The Commission finds that despite the fact that there is a unanimous approval provision in the Ozark partnership agreement, the two partners that have parent companies with marketing affiliates shipping on Ozark's line can still exercise "control" over Ozark. Section 161.2 of the Commission's regulations states:

> *Control* (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

The Commission finds that even with a unanimous approval provision in the partnership agreement, Ozark Pipeline Company and Tennessee Ozark Gas Company, the two partners whose parent companies have marketing affiliates, can each act alone to direct or affect the management or policies of Ozark Gas Transmission. Since there is a unanimous approval requirement, each partner has veto power over any decision by simply withholding its vote. Such power could be exercised in a manner that could unduly prefer the marketing affiliates related to Ozark's partners, for example, by either or both partners refusing to engage in an action that would benefit an independent marketer in competition with one of Ozark's partners' affiliates. The Commission believes that control can be exercised in a negative manner, *i.e.*, by withholding approval of a specific policy or transaction, as well as in an affirmative manner, *i.e.*, by actually approving a decision that would unduly prefer a marketing affiliate.

Extension of Reporting Requirements

Finally, the Commission will also extend the sunset date of Order No. 497's reporting requirements from December 31, 1992, until December 31, 1993, because of the important role they will play in the regulatory structure created by Order No. 636. Order No. 636 does not change the requirements governing the relationship between pipelines and their marketing affiliates.

[27] 18 CFR 161.2.

[28] 49 FERC ¶ 61,247 at 61,870 (1989).

[29] 969 F.2d at 1214.

However, Order No. 636 extends the requirements of Order No. 497 to pipelines providing unbundled gas sales service because the pipeline as merchant will be the functional equivalent of a marketing affiliate.[30] The Commission found in Order No. 636 that unbundling does not eliminate the potential for pipelines to favor their marketing affiliates because there is no change in the pipeline's control over the transportation function. Because of the fact that the potential for abuse in favor of marketing affiliates still exists, as recognized by Order No. 636, and the court found that it was in the Commission's discretion to provide for an annual review of the costs and benefits of Order No. 497's reporting requirements, the Commission will extend the sunset provision until December 31, 1993. This action is consistent with the Commission's finding in Order No. 636–A that abuses in the area of marketing affiliates might not be a perpetual problem and that increased competition that will result after unbundling may reduce the incentive for abuse.

Although Order No. 636 does not change the requirements governing the relationship between pipelines and their marketing affiliates, the structural change engendered by full compliance with the rule would remove the need to continue filing the affiliated transportation log (FERC Form No. 592) with the Commission. Order No. 636's EBB requirements ensure certain minimum standards for maintaining and communicating information about a pipeline's available capacity, current capacity release offers, and affiliate marketing-related information.[31] Unless further case-specific action is taken by the Commission, 90 days after the Commission has determined that a pipeline is in full compliance with the requirements of Order No. 636, that pipeline will no longer be required to submit the affiliated transportation log (FERC Form 592) to the Commission. The pipeline must continue to maintain [32] and to provide its affiliated transportation log information on its EBB.[33] In practice, this means that pipelines remain subject to the standards of conduct and will continue to maintain the Order Nos. 497- and 636-mandated information, but will no longer be required to file FERC Form No. 592 with the Commission.[34]

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [35] require that OMB approve certain information collection requirements imposed by agency rule. The information collection requirements of Order No. 497 are contained in FERC Form No. 592, "Marketing Affiliates of Interstate Pipelines." The Commission is notifying OMB that it is extending the sunset provision for Order No. 497's reporting requirements and submitting the information collection provisions in this notice for its approval.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

This order is effective January 13, 1993.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 161 and 250, chapter I, title 18 *Code of Federal Regulations* as set forth below.

[30] For this reason, the Commission notes that pipeline sales, after compliance with Order No. 636, need not be performed by the pipeline's marketing affiliate. Rather such sales may be performed on an unbundled basis by a separate sales division of the pipeline. Such sales are subject to certain requirements discussed in Order No. 636 and Order No. 636–A.

[31] In brief, new § 284.8(b)(4) and § 284.9(b)(4) require that a pipeline's EBB must provide for information downloading by users, daily back up of information, purging information on completed transactions, displaying most recent entries ahead of information posted earlier, on-line help, a search function and menu selections.

[32] 18 CFR 250.16(a)(3).

[33] In Order No. 636, the Commission created new regulations which, *inter alia*, require all interstate pipelines transporting pursuant to Part 284 of the Commission's regulations to create and maintain EBBs. See § 284.8(b)(4) and § 284.9(b)(4), 57 FR 13267 (April 16, 1992). Once operational, the EBB would become a pipeline's tool for compliance with Order No. 497's 24-hour electronic information requirement. See 18 CFR 250.16(g)(2) (1992).

[34] Although pipelines would no longer be required to file FERC Form 592 with the Commission, they would still be required to follow the content requirements of that form in providing electronic access and maintaining affiliated transportation log information.

[35] 5 CFR 1320.14.

By the Commission. Commissioner Moler dissented in part with a separate statement attached. Commissioner Terzic dissented.

Lois D. Cashell,

Secretary.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 161.3, paragraph (f) is revised to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(f) To the extent it provides to a marketing affiliate information related to transportation of natural gas, or information related to gas sales or gas marketing on its system or the system of an affiliated pipeline, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system. Pipelines are not required to contemporaneously disclose: (1) Gas sales or gas marketing information that is available from public sources and (2) Information related to gas sales or gas marketing off a pipeline's system, but not involving the system of an affiliated pipeline.

* * * * *

PART 250—FORMS

1. The authority citation for part 250 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) introductory text and (d)(1) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* * * *

(3) Maintain all information required under this section from the time the information is received until December 31, 1993.

* * * * *

(c) *What to maintain.*

(1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1993.

(2) The information required to be maintained by this section will be

available from September 12, 1988 until December 31, 1994 to:

* * * * *

(d) *When to file.*

(1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until the earlier of: 90 days after the Commission has determined that the pipeline is in full compliance with the requirements of Order No. 636; or December 31, 1993. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

* * * * *

Moler, Commissioner, *dissenting in part:*

With only minor exceptions, the majority continues to require that pipelines contemporaneously disclose to all shippers the gas sales and marketing information provided to their affiliates.[1] I disagree as a matter of policy. The requirement for contemporaneous disclosure unduly burdens pipelines and gives the pipelines' competitors an unwarranted advantage. It is also unnecessary because Standards C and E are more than adequate safeguards against affiliate abuse.

Standard C prohibits pipelines from giving their marketing affiliates preferences in receiving open access transportation.[2] Standard E prohibits pipelines from disclosing, to their marketing affiliates, information which they receive from nonaffiliated shippers.[3] The retention of these provisions adequately protects nonaffiliated marketers. The court's main concern in *Tenneco Gas* v. *Federal Energy Regulatory Commission (Tenneco)*[4] was that a pipeline should not be allowed to use its market power over transportation to skew the competitive market for natural gas in favor of its affiliate.[5] These provisions accomplish that without imposing undue burdens on pipelines and their affiliates.

I also disagree as a matter of law. I do not believe the Commission has met the challenge imposed by the court in order to justify retention of Standard F in the face of court's explicit remand in *Tenneco*. There the court found the commission's explanation for requiring contemporaneous disclosure of sales and marketing information was "unsatisfactory".[6] On remand, the court required us to justify the disclosure requirement in terms of the pipeline's monopoly control over transportation service.[7] This the Commission has failed to do.

The order is vague; it does not discuss the types of sales and marketing information that may be obtained in providing transportation services, and thus properly subject to disclosure. Instead, the order cites as truth the bare assumptions previously advanced and rejected by the *Tenneco* court: That a pipeline's ongoing relationship with shippers yields information on sales and marketing information that is not readily available to others and that disclosing this information only to an affiliate creates an undue preference because the affiliate would not have otherwise learned that information. The order utterly fails to meet the burden of showing how this flows from the pipeline's anticompetitive exercise of market power. Wrapping itself in the court's language, the Commission concludes, without support or explanation, that any information obtained by the pipeline relating to sales and marketing on its system "flow[s] from the pipeline's anticompetitive market powers" and thus must be subject to disclosure.[8] The Commission, repeating the error exposed by the *Tenneco* court, asks the world to rely on "common sense" and the Commission's "experience."[9] That is not good enough.[10]

The court has already rejected the circular reasoning that any advantage to a marketing affiliate is a bad advantage.[11] The advantage a pipeline gives to its marketing affiliate is improper only to the extent that the advantage flows from the pipeline's anticompetitive market power. Otherwise, the court said, we would improperly cripple the permissible efficiencies of vertical integration that "cannot by themselves be considered uses of monopoly power."[12]

In conclusion, I would eliminate the contemporaneous disclosure requirement for all sales and marketing information. Thus I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 92–30269 Filed 12–11–92; 8:45 am]

BILLING CODE 6717–01–M

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[1] The order excludes from the contemporaneous disclosure requirement information obtained from public sources and information that does not directly involve the pipeline or an affiliated pipeline. Slip op. at 10.

[2] 18 CFR 161.3(c).

[3] 18 CFR 161.3(e).

[4] 969 F.2d 1187 (DC Cir. 1992).

[5] 969 F.2d at 1201.

[6] 969 F.2d at 1201.

[7] In particular, the Commission was to "ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefiting consumers, as well as preventing undue discrimination." 969 F.2d at 1201.

[8] Slip op. at 13; *cf.* 969 F.2d at 1201 ("[b]ut advantages a pipeline gives its affiliate are improper only to the extent that they flow from the pipeline's anti-competitive market power").

[9] Slip op. at 13.

[10] To be sure, while courts must defer to the "informed discretion" of the Commission, we must demonstrate how we are "informed" by relevant factual evidence. See generally *Michigan Consolidated Gas Co.* v. *FERC*, 883 F.2d 117, 123–124 (DC Cir. 1989), *cert. denied*, 494 U.S. 1079 (1990).

[11] The Commission made essentially the same claims to the court on brief as it does here.

There is no merit to the pipeline's argument that the Commission exceeded its authority in requiring disclosure of sales and marketing information rather than just transportation related information. As the Commission explained, for a pipeline to share sales and marketing information, like transportation information, with its affiliate, and not others, presents an obvious potential for undue discrimination * * *. Since the sales and marketing information, like transportation information, can afford a pipeline affiliate a significant advantage, the Commission had ample opportunity to require its disclosure to all potential shippers if the pipeline discloses such information to its affiliate.

Brief of Respondent Federal Energy Regulatory Commission at 37–38 (citations and footnote omitted).

[12] 969 F.2d at 1201.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8452]

RIN 1545–AG02

Information Returns of Brokers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to information returns of brokers. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations affect brokers effecting dispositions (including short sales) of securities, commodities, regulated futures contracts, and forward contracts and provide them with guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective July 1, 1983.

FOR FURTHER INFORMATION CONTACT: John P. Moriarty, 202–622–4950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1.6045–1(a)(5) of the Income Tax Regulations (26 CFR part 1) defines the term "commodity" for purposes of the information reporting requirements of section 6045 of the Internal Revenue Code. On January 5, 1984, the Internal Revenue Service published in the **Federal Register** proposed amendments (49 FR 646) to those regulations to clarify the definition of a commodity. The proposed regulations also contain an exception to the information reporting requirements for sales of small amounts of commodities.

Public Comments

A number of comments on the proposed regulations suggested specific *de minimis* dollar amounts or quantities of commodities that should be excepted from reporting. A public hearing on the January 1984 regulations was held on March 28, 1984. After consideration of all written comments regarding the proposed amendments, the final regulations under section 6045 are revised by this Treasury decision. The Internal Revenue Service anticipates finalizing the remaining aspects of the proposed amendments in the near future.

Explanation of Provisions

After considering the comments submitted with respect to the proposed regulations, the Service has concluded that specifically tailored rules that except certain transactions from the information reporting requirements will more appropriately balance the cost of reporting against the improvement in compliance attributable to reporting than a general *de minimis* rule. Further, the Service has determined that these rules should not necessarily be limited to transactions involving commodities, but rather should apply to sales of securities as well in appropriate circumstances.

Accordingly, the final regulations provide that no return of information is required for a sale effected by a broker for a customer if the sale is an "excepted sale." A sale is an excepted sale if it is so designated by the Service in a revenue ruling or revenue procedure published in the Internal Revenue Bulletin.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is John P. Moriarty of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following authority citation:

Authority: 26 U.S.C. 7805 * * * Section 1.6045–1 also issued under 26 U.S.C. 6045 * * *

Par. 2. Section 1.6045–1 is amended by revising paragraph (c)(3) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) *Exceptions*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, the exceptions set forth in paragraph (c)(3) of § 5f.6045–1 of this chapter apply to sales effected on or after May 29, 1984. For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section. With respect to sales effected before May 29, 1984, the exceptions provided in § 1.6045–1(c)(3) (as contained in the CFR edition revised as of April 1, 1984) apply.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure published in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter).

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: November 19, 1992.

Allen J. Wilensky,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–30069 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[TD 8453]

RIN 1545–AM68

Review of Jeopardy Levy or Assessment Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the procedures for review of jeopardy levies and jeopardy and termination assessments. The Technical and Miscellaneous Revenue Act of 1988 expanded the coverage of the existing procedures for the review of an assessment made under sections 6851(a), 6852(a), 6861(a), or 6862 to include the review of those jeopardy levies made less than 30 days after notice and demand for payment is made under section 6331(a). In addition, because Congress intended to permit administrative and judicial review of all jeopardy levy cases where the general notice requirements of section 6331 (a) and (d) are not met, the regulations extend review to include all such cases. The regulations also incorporate the modifications to section 7429 which now provide the Tax Court with concurrent jurisdiction with the federal district courts regarding the review of jeopardy and termination assessments and jeopardy levies in certain circumstances, where previously only the district courts had jurisdiction with respect to the review of jeopardy and termination assessments.

EFFECTIVE DATE: These regulations are effective on December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph W. Clark, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7429 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 7429 by section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on May 9, 1991. The Internal Revenue Service received no public comments on the proposed regulations. No changes have been made to the final regulations.

Section 6237 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100–647, 102 Stat. 3573) amended section 7429 of the Code to extend the existing procedures relating to the review of jeopardy and termination assessments to the review of certain jeopardy levies. The regulations specify that the Internal Revenue Service must give the taxpayer whose property has been subjected to jeopardy or termination assessment a written statement of the information on which the action is based within 5 days of the date the jeopardy or termination assessment is made. A written statement is also required within 5 days of the date that a jeopardy levy is made if the general notice requirements of section 6331 (a) and (d) are not met with respect to the levy. The taxpayer has 30 days from receipt of the written statement or, if no statement was provided, 30 days from the date the statement was required to be furnished to request administrative review. The taxpayer may commence judicial review of the reasonableness of the jeopardy or termination assessment or levy by bringing a civil action in the appropriate court within 90 days after the earlier of (1) the date of notice of the administrative review determination or (2) the 16th day after the request for review was made. The regulations further reflect the grant to the Tax Court of concurrent jurisdiction with the federal district courts over challenges to jeopardy and termination assessments and levies if the taxpayer has filed a petition with the Tax Court prior to the making of the jeopardy assessment or levy with respect to any deficiency covered by the jeopardy assessment or levy notice.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joseph W. Clark, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Lists of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2 Sections 301.7429–1, 301.7429–2 and 301.7429–3 are revised to read as follows:

§ 301.7429–1 Review of jeopardy and termination assessment and jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or a levy is made under section 6331(a) without complying with the notice before levy provisions of section 6331(d), the district director shall provide the taxpayer a written statement setting forth the information upon which the district director relies in authorizing such assessment or levy.

§ 301.7429–2 Review of jeopardy and termination assessment and jeopardy levy procedures.

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in § 301.7429–1 is given to the taxpayer. However, if no statement is given within the 5 day period described in § 301.7429–1, any request for review of the jeopardy or termination assessment or jeopardy levy shall be filed within 35 days after the date such assessment or levy is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to make the redetermination described in section 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment is reasonable and the amount assessed is appropriate, or whether the jeopardy levy is reasonable, the district director shall take into account not only information available at the time the assessment or jeopardy levy is made but also information which subsequently becomes available.

(c) *Abatement of assessment.* For rules relating to the abatement of assessments made under sections 6851 and 6861 see § § 301.6861–1(e), 301.6861–1(f) and 1.6851–1(d) of this chapter.

§ 301.7429–3 Review of jeopardy and termination assessment and jeopardy levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in section 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of—

(1) The date the district director notifies the taxpayer of the determination described in section 7429(a)(3) and ending on the 90th day thereafter; or

(2) The 16th day after the request described in section 7429(a)(2) was made by the taxpayer and ending on the 90th day thereafter.

(b) *Extension of period for judicial review.* The United States Government may not by itself seek an extension of the 20 day period described in section 7429(b)(3), but it may join with the taxpayer in seeking such an extension.

(c) *Jurisdiction for determination.*—In general, the United States district court will have exclusive jurisdiction over any civil action for a determination described in section 7429(b). However, if a petition for a redetermination of a

deficiency has been timely filed with the Tax Court prior to the making of an assessment or levy that is subject to the section 7429 review procedures, and one or more of the taxes and tax periods before the Tax Court as a result of the petition is also included in the written statement that was provided to the taxpayer, then the Tax Court will have jurisdiction concurrent with the district courts over any civil action for a judicial determination with respect to all the taxes and tax periods included in the written statement. In all other cases, the appropriate United States district court continues to have exclusive jurisdiction over such an action.

David G. Blattner,

Acting Commissioner of Internal Revenue.

Approved: November 13, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–30184 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule, amendment.

SUMMARY: The Office of Foreign Assets Control (FAC) is amending the Foreign Assets Control Regulations (the "FACR"), to authorize U.S. common carriers to make current settlement payments to Vietnam or Vietnamese nationals with respect to telecommunications transactions involving Vietnam.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule amends § 500.571 of the FACR (31 CFR part 500), which authorizes telecommunications transactions involving Vietnam, provided that payments owed to Vietnam or its nationals are deposited into blocked interest-bearing accounts in domestic U.S. banks pending full lifting of the embargo. The final rule removes the requirement that such proceeds be deposited into blocked U.S. accounts, and the requirement that the establishment of these accounts be reported to FAC. The effect of this amendment is to authorize current settlement accounts with Vietnam or its nationals arising from telecommunications authorized in § 500.571 of the FACR.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 563, requiring notice of proposed rulemaking opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Banks, Blocking of assets, Reporting and recordkeeping requirements, Telecommunications, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 500.571 is revised to read as follows:

§ 500.571 Transactions related to telecommunications authorized.

All transactions of U.S. common carriers incident to the receipt or transmission of telecommunications involving Vietnam are authorized.

Note: Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), not prohibited by this part may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768–799.

Dated: November 17, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 25, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–30188 Filed 12–9–92; 12:05 pm]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 367

[DoD Directive 5136.1]

Assistant Secretary of Defense for Health Affairs (ASD(HA))

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revised 32 CFR part 367 to reflect the Deputy Secretary of Defense's guidance on strengthening the medical personnel, facilities, programs, land funding and other resources within DoD which are subject to the authority, direction and control of the ASD (Health Affairs). In addition, this document establishes the Defense Medical Advisory Council to provide advice to the ASD (Health Affairs).

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: R. Kennedy, Office of the Director of Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC, 20301, telephone 703–697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367

Organization and functions (Government agencies).

Accordingly, 32 CFR part 367 is revised to read as follows:

PART 367—Assistant Secretary of Defense for Health Affairs (ASD(HA))

Sec.

367.1 Purpose.
367.2 Applicability.
367.3 Responsibilities.
367.4 Functions.
367.5 Relationships.
367.6 Authorities.

Authority: 10 U.S.C. 136.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, this part:

(a) Designates one of the positions of Assistant Secretary of Defense as the ASD(HA).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(HA).

§ 367.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General,

Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as the "DoD Components").

§ 367.3 Responsibilities.

The Assistant Secretary of Defense for Health Affairs is the principal staff assistant and advisor to the Secretary of Defense for all DoD health policies, programs, and activities and is responsible for the effective execution of the Department's medical mission which is to provide, and to maintain readiness to provide, medical services and support to members of the Armed Forces during military operations, and to provide medical services and support to members of the Armed Forces, their dependents, and others entitled to DoD medical care.

(a) In carrying out his responsibilities, the ASD(HA) shall exercise authority, direction, and control over the medical personnel, facilities, programs, and funding and other resources within the Department of Defense. The ASD(HA)'s exercise of that authority, direction, and control shall include, but not be limited to:

(1) Establishing policies, procedures, and standards which shall govern DoD medical programs.

(2) Serving as program manager for all DoD health and medical resources. Prepare and submit in the Department's planning, programming, and budgeting system (PPBS) a unified medical program and budget to provide resources for all medical activities within the Department of Defense. Consistent with applicable law, all funding for the DoD medical program, including operation and maintenance, procurement, research and development, and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), but excluding the personnel funds for active and reserve medical military personnel, which shall be in a single defense medical appropriations account, and funds for medical facility military construction shall be in a single appropriations account.

(3) Presenting and justifying the unified medical program and budget throughout the PPBS process, including the Defense Planning and Resources Board, and with Congress.

(4) Performing such other duties as the Secretary or Deputy Secretary of Defense may assign.

(b) The ASD(HA) may not direct a change in the structure of the chain of command within a Military Department with respect to medical personnel and may not direct a change in the structure of the chain of command with respect to medical personnel assigned to that command.

§ 367.4 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in § 367.3, including for the following functional areas:

(1) Medical readiness.

(2) Disease prevention.

(3) Health promotion.

(4) Health benefits programs.

(5) Alcohol and drug abuse treatment.

(6) Cost containment.

(7) Professional affairs, quality assurance, and utilization management.

(8) Medical information systems.

(9) DoD medical research and development program.

(10) Procurement, professional development, and retention of medical and dental personnel, and related health care specialists and technicians.

(11) Military medical construction.

(12) Medically related services for disabled children.

(13) DoD financed, civilian provided, health care services.

(14) Medical education and graduate medical education programs.

(b) Chair and establish the agenda of the Defense Medical Advisory Council (DMAC), which shall provide advice to the ASD(HA) in the execution of the DoD medical mission. The DMAC shall consist of the ASD(HA), one civilian Presidential Appointee from each of the Military Departments designated by the Secretary concerned, one general or flag officer from each Military Service designated by the Secretary of the Military Department concerned, and the President of the Uniformed Services University of the Health Sciences.

(c) Chair the Armed Services Biomedical Research Evaluation and Management Committee.

§ 367.7 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Coordinate and exchange information with other OSD Officials and heads of DoD Components having collateral or related functions.

(2) Consult, as appropriate, with the Comptroller of the Department of Defense (C, DoD), and the Assistant Secretary of Defense for Program Analysis and Evaluation to ensure that medical planning, programming, and budgeting activities are integrated with the DoD PPBS. The C, DoD shall allocate and reallocate the funds in the Defense Health Program account and the medical facility military construction account among the DoD Components in accordance with ASD(HA) instructions and applicable law.

(3) Obtain through the Chairman of the Joint Chiefs of Staff, submissions of the operational and other needs of the commanders of the Unified and Specified commands, and obtain submission from the Secretaries of the Military departments of their proposed elements of the medical unified program and budget, and shall consider, review, and integrate those submissions as appropriate.

(4) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(5) Exercise direction, authority, and control over:

(i) The Office of Civilian Health and Medical Program of the Uniformed Services.

(ii) The Defense Medical Programs Activity.

(iii) The Armed Forces Institute of Pathology.

(iv) The Uniformed Services University of the Health Sciences (USUHS) pursuant to the authority vested in the Secretary of Defense by 10 U.S.C. Chapter 104 and the Department of Defense Appropriations Act, 1991, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense.

(b) Other OSD officials and Heads of DoD Components shall coordinate with the ASD(HA) on all matters concerning the functions in § 367.4.

§ 367.5 Authorities.

The ASD(HA) is hereby delegated authority to:

(a) Issue orders, DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], regarding the accomplishment of functions and responsibilities assigned by the Secretary of Defense in this part. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [2], as necessary.

(c) Communicate directly with the Heads of the DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the Chairman of the Joint Chiefs of Staff.

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 367.5(a).

(d) Make determinations on the uniform implementation of laws on separation from the Military Departments due to physical disability as prescribed in DoD Directive 1332.18 [3].

(e) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense's responsibility to administer 10 U.S.C. chapter 55.

(f) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(HA) has been assigned primary cognizance.

(g) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(h) The ASD(HA) also is hereby delegated the authorities contained in enclosure 1 of DoD Directive 5105.45 [4]. The ASD(HA) may modify, terminate, or redelegate these authorities, in whole or in part as appropriate, and in writing, except as otherwise provided by law or regulation.

Dated: December 8, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30285 Filed 12-11-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD Regulation 92-05-33]

Safety Zone Regulation: Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing safety zones for Inner Harbor fireworks displays in Baltimore. Fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Patapsco River, Inner Harbor, Baltimore, Maryland. The safety zones are necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of navigable waters during the events.

EFFECTIVE DATE: These regulations will be effective from 6 p.m. until 6:30 p.m. on December 05, December 12, and December 20.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams, U.S. Coast Guard Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-5104.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, notices of proposed rulemaking have not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures is not possible due to time of receipt of notices of intent to conduct fireworks displays. Specifically, the sponsor's application to hold these events was not received until November 12, 1992, leaving insufficient time to publish notices of proposed rulemaking in advance of the event.

Drafting Information: The drafters of this regulation are Lieutenant Junior Grade Mark Williams, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose: On November 12, 1992, the Baltimore Office of Promotion submitted applications to hold fireworks displays on December 05, 12, and 20, 1992. As part of its application, the Baltimore Office of Promotion requested the Coast Guard to provide assistance with control of spectator and commercial vessel traffic in the vicinity of the fireworks displays.

Discussion of Regulations: These fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Inner Harbor, Patapsco River, Baltimore, Maryland. These Safety Zones will consist of a circle, with a radius of 600 feet, around the barge. These regulations are necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of the Patapsco River during the fireworks events. Since the main shipping channel will not be closed and these regulations will only be in effect for one half hour, the impacts on routine navigation should be minimal.

These emergency rules are not considered major under Executive Order 12291 and are not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The Coast Guard also considered the impact of these regulations on small entities and concluded that such impact should be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these emergency rules do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations: In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 C.F.R. 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 C.F.R. 1.46.

2. A temporary section 165.T592 is added to read as follows:

§ 165.T592 Safety Zone: Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Location:* The following area is a safety zone: The waters of the Patapsco River, Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39-17-00 North, longitude 076-36-15 West.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Baltimore, Maryland.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962-5105.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 16 and 81.

(c) *Local Regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective time of the safety zone.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

[3] See footnote 1 to § 367.5(a).

[4] See footnote 1 to § 367.5(a).

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Effective Date:* These regulations will be effective from 6 p.m. until 6:30 p.m. on December 05, December 12, and December 20 unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: December 4, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92-30154 Filed 12-11-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[GA 017 and 020-4-5418; FRL-4111-1]

Approval and Promulgation of Implementation Plans Georgia: Approval of PM_{10} SIP

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 15, 1988, and January 3, 1991, the State of Georgia submitted a revision to the Georgia State Implementation Plan (SIP). However, it was not until April 3, 1991, that all the required elements were submitted, making the January 3, 1991, package a complete submittal. EPA is approving the revisions submitted by Georgia on April 15, 1988, January 3, 1991, and April 3, 1991. The revisions were submitted pursuant to the requirements of Section 110 of the Clean Air Act to provide for the attainment of the new particulate matter standards known as "PM_{10}" standards which replaced the total suspended particulate (TSP) standards. On July 1, 1987, EPA promulgated a new ambient air quality standard for particulate matter which was based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). Consequently, States were required to develop plans which provide for attainment and maintenance of these new standards. The Georgia SIP revisions demonstrate that the existing SIP for total suspended particulates (TSP) is adequate to provide for attainment and maintenance of the PM_{10} standards.

EFFECTIVE DATES: This action will be effective February 12, 1993, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Liz Wilde of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street, Southeast, Room 1162, East Tower, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347-2864 or (FTS) 257-2864 and at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM_{10}.

In order for States to regulate PM_{10}, they must make certain changes in their rules and regulations and in the SIPs. The changes to the rules and the SIP must insure that the PM_{10} NAAQS are attained and maintained; that new and modified sources which emit PM_{10} are reviewed; that PM_{10} is one of the pollutants to trigger alert, warning, and emergency actions; and that the State's monitoring network be designed to include PM_{10} monitors. These changes must be made regardless of the existing levels of PM_{10} in any area of the State. The regulations call for the PM_{10} SIPs to be submitted nine months after the Federal PM_{10} regulations went into effect on July 31, 1987.

Because PM_{10} air quality data was lacking in most areas of the country, EPA could not arbitrarily designate areas as attainment or nonattainment. EPA developed an analysis using historical ambient TSP data and any available PM_{10} data, to classify all counties in the nation into one of three groups based upon the statistical probabilities of not attaining the new PM_{10} standards. EPA has classified the following: (1) Areas with probability of not attaining the PM_{10} standards of at least 95 percent as "Group I", (2) areas with a probability of not attaining the PM_{10} standard of between 20 and 95 percent as "Group II", and (3) areas with a probability of not attaining the PM_{10} standard of less than 20 percent as "Group III". All areas are currently conducting ambient monitoring to determine whether actual ambient PM_{10} concentrations are above or below the PM_{10} NAAQS.

A control strategy is required to show how PM_{10} emissions will be reduced to provide for attainment and maintenance of the PM_{10} NAAQS for a Group I area. For Group II areas, the States are required to commit to perform additional PM10 monitoring in that area and to prepare a control strategy if the data show with certainty that the standards are being exceeded. The commitments must be submitted in the form of an SIP revision and are termed a "committal" SIP.

EPA reviewed TSP monitoring data from Georgia to evaluate the probabilities of PM_{10} air quality levels, and concluded that Georgia was a Group III area. This means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the PM_{10} standards. The Georgia SIP, however, still needed to be revised to address the PM_{10} NAAQS in the following ways:

(a) To include State ambient air quality standards for PM_{10} at least as stringent as the NAAQS,

(b) To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions,

(c) To invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 ug/m^3,

(d) To meet ambient PM_{10} monitoring requirements of 40 CFR part 58, and,

(e) To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

In the April 15, 1988, SIP submittal, Georgia made the following regulation changes to satisfy the above requirements:

I. Georgia revised its SIP to address the PM_{10} NAAQS. The definitions for "Total Suspended Particulate", "Particulate Matter", "Particulate Matter Emissions", "PM_{10}", and "PM_{10} Emissions" were added or modified to read the same as the federal definitions.

II. The Air Quality Control Rules dealing with the prevention of significant deterioration of air quality were amended to incorporate the needed PM_{10} modifications to comply with federal regulations.

III. In the permit review regulations, provisions were added to require major sources impacting a nonattainment area to meet additional federal requirements regarding allowable offset emissions controls before being granted a state permit.

IV. In the Air Pollution Episodes regulations, several revisions were made. The paragraphs for Alert, Warning, and Emergency were revised to add the criterium for PM_{10}. The criteria for suspended particulates was deleted.

EPA's review of the April 15, 1988, submittal, identified four issues within the SIP submittal that were deficient and needed correction. In a letter dated July 6, 1988, EPA identified the following issues that needed corrections:

(a) Georgia's PM_{10} SIP dealt with the NAAQS being protected everywhere at "ground level". EPA requires that the NAAQS be attained and maintained in the "ambient air", as defined in 40 CFR part 50.1(e).

(b) Georgia did not adopt a new 24-hour and annual, primary and secondary particulate matter NAAQS measured as PM_{10}.

(c) The new particulate matter SIP did not require new sources locating in attainment or unclassifiable areas for any criteria pollutant to obtain ambient offsets if such sources would cause or contribute to nonattainment levels for any criteria pollutant in excess of significant levels as required by 40 CFR part 51.165(b).

(d) The Prevention of Air Pollution Episodes Plan contained PM_{10} levels deemed inadequate to prevent Significant Harm levels from being reached.

Dialogue between EPA and the Georgia Department of Natural Resources has led to the resolution of these issues as follows:

(a) Due to long-standing EPA policy, it is EPA's position that Georgia's proposed particulate matter NAAQS must prohibit exceedances of the standard everywhere in the "ambient air". The Code of Federal Regulations (CFR) clearly defines "ambient air" to mean that portion of the atmosphere external to buildings to which the general public has access (see 40 CFR part 50.1(e)). This includes rooftops and balconies of buildings accessible to the public. Therefore, the NAAQS must be attained everywhere in the "ambient air" and not just at "ground level".

Georgia's January 3, and April 3, 1991, submittals correct the definition from "ground level" to ambient air.

(b) EPA's promulgation of a new NAAQS for particulate matter on July 1, 1987, and subsequent guidance from EPA to states on how to develop new SIPs pursuant to the new particulate matter NAAQS, envisioned a process where states would adopt new 24-hour and annual, primary and secondary particulate matter NAAQS measured as PM_{10}. In such an approach, in addition to a provision giving the numerical value of the particulate matter standards, there would need to be a provision stating that for the purpose of determining attainment of the NAAQS, particulate matter shall be measured in the ambient air as PM_{10}. Also, there would need to be an appropriate definition for "PM_{10}" which required measurement by a reference method based on appendix J of 40 CFR part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated by EPA.

Georgia's approach in developing their new particulate matter standard was to adopt a PM_{10} NAAQS rather than a particulate matter NAAQS measured as PM_{10}. Georgia's adoption included an appropriate definition of "PM_{10}". Georgia's adoption, however, also included the following provision: "PM_{10} shall be measured in the ambient air as PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by a reference method based upon 40 CFR part 50, appendix J. There was no need for such a provision in the Georgia regulations because Georgia adopted a PM_{10} NAAQS, rather than a particulate matter NAAQS measured as PM_{10}. Thus the numerical value of the PM_{10} NAAQS and an appropriate definition of PM_{10} is all that was needed.

Despite the fact that inclusion of the provision as well as Georgia's failure to adopt the numerical value of the NAAQS as both a primary and a secondary standard are both inconsistent with national PM_{10} SIP development guidance, Region IV will proceed to approve the Georgia PM_{10} SIP without the suggested changes being made since neither appears to cause a fundamental defect in the SIP.

(c) Due to specific requirements in the Code of Federal Regulations (40 CFR 51.165(b)), it was necessary for Georgia's proposed PM_{10} SIP to require "ambient offsets" rather than "emission offset." Further, such requirements must clearly be defined to apply "within areas that do not or would not meet the applicable NAAQS or within an area that is designated nonattainment for the applicable NAAQS." Georgia revised the PM_{10} SIP to provide for the ambient offsets as well as establishing acceptable significance levels for "cause or contribute" to nonattainment of a NAAQS.

(d) The Code of Federal Regulations and PM_{10} SIP guidance clearly indicate that the PM_{10} SIPs had to replace the TSP Significant Harm level with a level of 600 micrograms per cubic meter for PM_{10} and that PM_{10} SIPs had to incorporate emergency episode criteria for PM_{10}. 40 CFR part 51.151 specifically indicates that Priority 1 Regions need a contingency plan which must, as a minimum, provide for taking action necessary to prevent ambient pollution concentrations at any location from reaching the Significant Harm Levels specified in 40 CFR 51.151. The principal problem with Georgia's submittal is that while it contains three stages of episode criteria (one more than the minimum required) and appropriate emission control actions for each stage of episode criteria specified, the third stage of episode criteria for all pollutants is triggered by ambient concentrations specified in 40 CFR part 51.151 as the Significant Harm Level. This is not allowed because all stages of episode criteria and their corresponding emission control actions must be triggered by ambient concentrations below the Significant Harm Level in order to prevent the Significant Harm Level from ever being reached.

Georgia revised their Prevention of Air Pollution Episodes Plan to incorporate lower levels to trigger Significant Harm which are consistant with 40 CFR part 51 appendix L.

Final Action

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR part 51. Therefore, EPA is today approving Georgia's PM_{10} SIP.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective February 12, 1993. However, if notice is received

within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the federally approved States Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that part of the submittal preceded the date of enactment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Under 5 U.S.C. section 605 (b), I certify that this approval action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 7, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(38) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(38) State implementation plan for PM10 which was submitted on April 15, 1988, January 3, 1991, and April 3, 1991, by the Georgia Department of Natural Resources.

(i) Incorporation by reference.

(A) Revisions to Chapter 391–3–1, "Air Quality Control" which became State effective April 14, 1988. Rule 391–3–1–.01, "Definitions", mm, yyy, zzz, aaaa; Rule 391–3–1–.02(4)(c), "Ambient Air Standards"; Rule 391–3–1.–02(7), "Prevention of Significant Deterioration of Air Quality".

(B) Revisions to Rule 391–3–1–.02(4)(c), "PM10", which became State effective January 9, 1991.

(ii) Other material.

(A) April 15, 1988, January 3, 1991, and April 3, 1991, letters from the Georgia Department of Natural Resources.

[FR Doc. 92–29819 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–1–MA–5–1–5295; FRL–4536–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT for Dartmouth Finishing Corporation in New Bedford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from fabric printing and fabric finishing operations at Dartmouth Finishing Corporation (Dartmouth) in New Bedford, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination submitted by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective February 12, 1992, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 565–3249.

SUPPLEMENTARY INFORMATION: On May 15, 1991, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consisted of a plan approval issued by the Massachusetts Department of Environmental Protection (DEP) which imposed VOC control measures as RACT for Dartmouth Finishing Corporation located in New Bedford, Massachusetts. This final rulemaking action approves the formal SIP revision submittal by the DEP on May 15, 1991. This notice is divided into three parts:

I. Background Information
II. Summary of SIP Revision
III. Final Action

I. Background Information

On November 9, 1983 (48 FR 51480), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)", as part of the Commonwealth of Massachusetts 198-

ozone attainment plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year or more of VOC that are not already subject to Massachusetts regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.

On January 10, 1991, the Massachusetts DEP submitted a proposed SIP revision consisting, in part, of a draft non-CTG RACT plan approval defining VOC control requirements for Dartmouth. EPA reviewed the document for enforceability, completeness and technical sufficiency, and provided written comments to the DEP on February 13, 1991. Massachusetts incorporated EPA's proposed changes and submitted a final plan approval as a SIP revision on May 15, 1991.

II. Summary of SIP Revision

Dartmouth's VOC emissions have been reduced from 304 tons per year in 1984 to a maximum of 28 tons per year, resulting in a 90.8% reduction based on typical production. Dartmouth achieved its emissions reductions by reformulating its printing pastes. The DEP's May 13, 1991 final plan approval limits the content of Dartmouth's print pastes to 0.35 pounds of VOC per pound of solids, and requires that fabric finishing mixtures utilized by Dartmouth not exceed 0.115 pounds of VOC per pound of solids. The final plan approval also imposes a daily VOC emission limit on Dartmouth of 0.14 tons per day (280 pounds per day).

A CTG has not been issued for the fabric printing and fabric finishing operations at Dartmouth. However, the CTG governing graphic arts printing covers a printing process that is similar to the fabric printing and finishing operations at Dartmouth. The graphic arts CTG recommends a 65% overall reduction in VOC emissions from packaging rotogravure and a 75% overall reduction for publication rotogravure when using add-on controls. Furthermore, EPA has determined that 0.5 pounds of VOC per pound of solid is RACT for flexographic and packaging rotogravure printing. The emission reductions achieved by Dartmouth through reformulation of its print pastes are consistent with the reductions anticipated through add-on controls or through reformulation at facilities required to meet the emission limits suggested by EPA's graphic arts CTG. For these reasons, the DEP has imposed emission limits of 0.35 pounds of VOC per pound of solids for print pastes, and a limit of 0.115 pounds of VOC per pound of solids for fabric finishing mixtures used by Dartmouth. In addition, a daily emissions limit of 0.14 tons (280 pounds per day) will ensure maintenance of the 90.8% reduction in annual VOC emissions achieved by Dartmouth.

III. Final Action

EPA is approving Massachusetts final plan approval No. 4P89051 dated and effective May 13, 1991 as a Revision to the Massachusetts SIP. The final plan approval establishes and imposes RACT consisting of an emission limit of 0.35 pounds of VOC per pound of solids for print pastes and 0.115 pounds of VOC per pound of solids for fabric finishing mixtures. In addition, the final plan approval imposes a daily emissions limit of 280 pounds of VOC for Dartmouth Finishing Corporation in New Bedford, Massachusetts. EPA is approving this SIP revision without prior proposal because the Agency views this as an uncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on (60 days from date of publication).

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note. Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 27, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52–[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(95) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection of May 15, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated May 15, 1992 submitting a revision to the Massachusetts State Implementation Plan.

(B) Final Plan Approval No. 4P89051, dated and effective May 13, 1991 imposing reasonably available control technology on Dartmouth Finishing Corporation, New Bedford, Massachusetts.

* * * * *

§ 52.1167 [Amended]

3. Table 52.1167 is amended by adding the following entry to state citation 310 CMR 7.18(17) to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

[See Notes at End of Table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120 (c)	Comments/unapproved sections
• • •	•	•	•	• •		•
310 CMR 7.18(17)	RACT	May 13, 1991	[Insert date of publication in FR]	[Insert FR citation from published date].	(95)	RACT for Dartmouth Finishing Corporation.
• • •	•	•	•	• •		•

[FR Doc. 92-29820 Filed 12-11-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[MA-9-4-5399; A-1-FRL-4536-7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision consists of a regulation entitled "Dispensing of Motor Vehicle Fuel" which requires motor vehicle fuel dispensing facilities to install and operate Stage II vapor recovery equipment. By this action EPA is approving this regulation which limits the amount of volatile organic compounds (VOC) emitted to the atmosphere during the refueling of automobiles. This action is being taken in accordance with section 110 of the Clear Air Act.

EFFECTIVE DATE: This rule will become effective on January 13, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: On May 17, 1990, EPA received a formal State Implementation Plan (SIP) submittal from the Commonwealth of Massachusetts' Department of Environmental Protection (DEP). This submittal contained new subsection 310 CMR 7.24(6) entitled "Dispensing of Motor Vehicle Fuel;" amendments to 310 CMR 7.00 "Definitions;" and amendments to subsection 310 CMR 7.24(2)(c) requiring Stage I vapor recovery in Berkshire County. Subsequently, in a letter to EPA dated July 5, 1990, DEP withdrew the Stage I portion of the SIP submittal. Massachusetts Stage I regulation has since been resubmitted to EPA and is being processed as part of another Agency action.

This state-initiated SIP revision was submitted prior to the enactment of the Clean Air Act Amendments (CAAA) of 1990. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The Clean Air Act, as amended in 1990 (CAA), requires states with moderate or above ozone nonattainment areas adopt Stage II vapor recovery regulations and submit them to EPA by November 15, 1992 [section 182(b)(3)(A)].

On June 7, 1991, EPA received another formal SIP submittal containing an amendment to subsection (6) of 310 CMR 7.24. Massachusetts submitted this revision in response to EPA's Notice of Proposed Rulemaking (NPR) for this action published on July 10, 1991 (56 FR 31364). In addition, on April 21, 1992, DEP submitted an implementation policy statement regarding its Stage II program and a draft document entitled "Stage II Vapor Recovery Program Compliance and Enforcement Protocol."

Dispensing of Motor Vehicle Fuel—310 CMR 7.24(6)

This regulation requires all existing motor vehicle fuel dispensing facilities in Massachusetts with throughput volumes of greater than 20,000 gallons per month to install and operate Stage II vapor recovery equipment. The required installation date for the vapor recovery equipment varies depending on a facility's annual gasoline throughput. In addition, this regulation also requires any motor vehicle fuel dispensing facility, which has been constructed or substantially modified after November 1, 1989, regardless of throughput, to install and operate a Stage II vapor recovery and control system.

Definitions Added to 310 CMR 7.00

Definitions of the following terms which appear throughout the above Stage II regulation have been added to 310 CMR 7.00: "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system."

EPA proposed to approve the Massachusetts Stage II regulation and associated definitions with the understanding that prior to final rulemaking the Massachusetts DEP would make the necessary amendments to the rule as outlined in EPA's NPR. The necessary amendments and Massachusetts' response are discussed below. In addition, the NPR stated that when EPA published its guidance on Stage II vapor recovery, EPA would subsequently review Massachusetts' rule in accordance with this new guidance. Results of this review are summarized in the "Outstanding

Issues" section below. EPA guidance on Stage II vapor recovery is contained in the following documents: Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities (EPA–450/3–91–022b), and Enforcement Guidance for Stage II Vehicle Refueling Control Programs (EPA, Office of Mobile Sources). Massachusetts' regulation and EPA's evaluation are detailed in a memorandum dated July 27, 1992 entitled "Technical Support Document—Massachusetts—Stage II Vapor Recovery."

Amendments Required by EPA's NPR

Previously, 310 CMR 7.24(6)(b) stated: "* * * no person, owner, operator or employee of a motor vehicle fuel dispensing facility, shall dispense, or allow the dispensing of, motor vehicle fuel from any motor vehicle fuel dispensing facility unless the motor vehicle fuel dispensing facility is equipped with a properly operating vapor collection and control system." EPA's NPR noted that this language could be misinterpreted to mean only one pump per facility needs Stage II vapor recovery control equipment installed. Therefore, the NPR stated that this provision needed to be clarified to cover all nozzles dispensing motor vehicle fuel at a facility.

In response to EPA's comments, the Massachusetts DEP amended the regulation to read "* * * unless each motor vehicle fuel dispenser at the motor vehicle fuel dispensing facility is equipped with a properly operating vapor collection and control system." Thus, the regulation requires all pumps at a facility to have Stage II equipment installed. This amendment was included in the revised Stage II regulation that Massachusetts submitted to EPA on June 7, 1991.

In addition, the NPR stated that Massachusetts must address a second deficiency found at 310 CMR 7.24(6)(c)(4). This section requires that the vapor recovery system recover at least 95 percent by weight of motor vehicle fuel vapors displaced during the dispensing of motor vehicle fuel. A certified test method or a requirement to use only certified equipment is not, however, included in the regulation. The NPR stated that either a test method or a requirement to use only certified equipment must be specified in order to assure compliance. The NPR explained that as an alternative to testing each station for 95 percent control effectiveness, DEP could require Stage II systems to be certified to achieve at least a 95 percent reduction by either the California Air Resources Board (CARB), or by using CARB test procedures and methods or equivalent test procedures and methods developed by the DEP and approved by EPA. The DEP did not address this deficiency in the revised regulation which was submitted to EPA on June 7, 1991.

Although CARB certified systems are not explicitly referenced in Massachusetts' Stage II regulation, DEP has indicated to EPA that requiring these systems is the method currently being used by the State to implement the 95 percent control requirement. DEP staff have also indicated that Massachusetts is unable to reference another state's certification or testing procedures in a Massachusetts' regulation. EPA, therefore, agreed to consider, in addition to the regulation itself, other documentation which shows that the Massachusetts' Stage II program requires facilities to use CARB certified systems. In response, on April 21, 1992, DEP submitted the following documents to EPA: "Division of Air Quality Control Policy" and "Draft Stage II Vapor Recovery Program Compliance and Enforcement Protocol." Review of these documents indicates that they satisfactorily demonstrate that the Massachusetts Stage II program implements the 95 percent control requirement by requiring facilities to use CARB certified equipment, as specified in EPA's Stage II guidance documents.

Finally, the third deficiency noted in EPA's NPR relates to the applicability levels of the regulation. The Massachusetts regulation requires all motor vehicle fuel dispensing facilities with a throughput volume of greater than 20,000 gallons of motor vehicle fuel per month since January 1, 1988 to install Stage II vapor recovery systems. Section 182(b)(3)(A) of the amended CAA requires States with moderate or higher ozone nonattainment areas to submit to EPA by November 15, 1992 regulations which require Stage II systems for facilities which dispense greater than 10,000 gallons per month, or 50,000 gallons per month for independent small business marketers (ISBMs). Thus, the Massachusetts applicability levels are not consistent with the requirements of the amended CAA. For those stations that are not considered ISBMs, the Massachusetts regulation has a less stringent applicability cutoff. The DEP did not address this issue in their revised regulation submitted to EPA on June 7, 1991.

Outstanding Issues

On April 30, 1992, EPA provided comments to the Massachusetts' DEP which detailed the remaining outstanding issues which the State must address in order for the regulation to be considered consistent with EPA guidance and be approved as meeting the requirements of section 182(b)(3) of the CAA. Under the requirements of the CAA, Massachusetts must address the following outstanding issues by November 15, 1992:

1. As previously discussed, Massachusetts' Stage II applicability levels must be consistent with the requirements of the CAA.

2. As outlined in EPA's Stage II Enforcement Guidance, the following testing requirements should be included in the Massachusetts' Stage II regulation:

a. Testing, for verification of proper installation and function of the entire system, should be required once all of the equipment is in operational condition at the gasoline dispensing pumps. Liquid Blockage testing, Leak Check testing, and all other related tests for auto shutoff and flow prohibiting mechanisms, as applicable, should be conducted in accordance with the test procedures found in appendix J of the EPA document Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol II (EPA–450/3–91–022b).

b. Recertification of the function of Stage II equipment should be required at least every five years, or upon major system replacement or modification, whichever occurs first. This recertification should include a Leak Check Test and any and all other functional tests that were required for the initial system certification. A major system modification is considered to be replacing, repairing or upgrading 75 percent or more of a facility's Stage II equipment.

3. The recordkeeping provision in Massachusetts' regulation should be amended to include that the following records be kept, as specified by the Enforcement Guidance:

a. Any and all permits and licenses to operate a facility or a specific system at a facility;

b. Records which verify that the Stage II system meets or exceeds the requirements of a Liquid Blockage Test, a Leakage Test, or other applicable tests and which indicate the date of the test results and the installing and test companies' names, addresses and phone numbers;

c. A chronological file of inspection reports issued by the state;

d. A chronological file of compliance records including warnings, notices of violation, and other compliance records issued by the state; and

e. Training certification records showing proof of attendance and completion of required training.

In addition, the recordkeeping provisions stated in § 7.24(6)(f) of Massachusetts' Stage II regulation which currently require the recording of any failures of the Stage II equipment should be amended to include the recording of maintenance performed in response to these system failures.

Because of the noted deficiencies, EPA believes that this regulation does not meet the requirements of section 182(b)(3). As noted above, the DEP needs to address the remaining outstanding issues and, in accordance with the CAA, submit its revised regulation to EPA as a SIP revision by November 15, 1992. Although there are still outstanding issues associated with this rule, EPA is approving this revision to the Massachusetts SIP at this time, since it will strengthen the existing SIP and contribute to a reduction in volatile organic compound emissions until such time as DEP revises its rule to meet all of the requirements of section 182(b)(3) of the CAA.

Final Action

EPA is approving 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," and the addition of the following definitions to 310 CMR 7.00, as a revision to the Massachusetts SIP: "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system" submitted on May 17, 1990 and June 7, 1991. Today's action makes final the action proposed on July 10, 1991 (56 FR 31364). This approval is based on the strengthening effect of this submittal and is not an approval of the Stage II rule as meeting section 182(b)(3) of the amended CAA. EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established on January 19, 1989 (54 FR 2214).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 3, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(97) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(97) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 17, 1990, July 5, 1990, June 7, 1991, and April 21, 1992.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection, dated May 17, 1990 and June 7, 1991, submitting a revision to the Massachusetts State Implementation Plan.

(B) Definition of "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system," added to 310 CMR 7.00 and effective in the Commonwealth of Massachusetts on October 27, 1989.

(C) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the Commonwealth of Massachusetts on October 27, 1989.

(D) Amendments to 310 CMR 7.24(6)(b) "Dispensing of Motor Vehicle Fuel" and to the definition of "substantial modification" in 310 CMR 7.00, effective in the Commonwealth of Massachusetts on June 21, 1991.

(E) Amendment to the definition of "motor vehicle fuel dispensing facility" in 310 CMR 7.00, effective in the Commonwealth of Massachusetts on April 12, 1991.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection, dated July 5, 1990, requesting the withdrawal of amendments to subsection 310 CMR 7.24(2)(c) which require Stage I vapor recovery in Berkshire County from the SIP revision package submitted on May 17, 1990.

(B) Letter from the Massachusetts Department of Environmental Protection, dated April 21, 1992, submitting an implementation policy statement regarding its Stage II program. This policy statement addresses the installation of California Air Resources Board (CARB) certified systems, Stage II testing procedures, and defects in State II equipment.

(C) Nonregulatory portions of the submittal.

§ 52.1167 [Amended]

3. Table 52.1167 is amended by adding a new entry to state citation "310 CMR 7.00" and by adding a new state citation for "310 CMR 7.24(6)" to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of Table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120	Comments/unapproved sections
*	* *	*	*	*	*	*
310 CMR 7.00	Definitions	05/17/90, 06/07/91	12/14/92	[Insert *FR* citation from published date].	97	Added "motor vehicle fuel," "motor vehicle fuel dispensing facility," "substantial modification," and "vapor collection and control system."
*	* *	*	*	*	*	*
310 CMR 7.24(6)	"Dispensing of Motor Vehicle Fuel" (Stage II).	05/17/90, 06/07/91	12/14/92	[Insert *FR* citation from published date].	97	
*	* *	*	*	*	*	*

[FR Doc. 92–29821 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 621

RIN 3052–AB32

Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA) issued regulations on Accounting and Reporting Requirements, as a proposed regulation on August 27, 1985 (50 FR 34711). The regulation was published as a final regulation on March 13, 1986 (51 FR 8644). The regulation was developed in large part to set requirements and standards for institutions to use in accounting for high-risk assets (i.e., problem loans) and disclosing loan performance characteristics. The regulation included specific standards and reporting requirements for nonperforming loans. The regulation defined nonperforming loans as nonaccrual, formally restructured, other restructured and reduce rate, and other high-risk loans. The FCA is soliciting comments from the public on possible amendments to the regulatory requirements.

DATES: Comments should be received on or before February 12, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA has undertaken a project to amend and update 12 CFR part 621, Accounting and Reporting Requirements, to promote consistency with industry practices pertaining to problem loan accounting issues and to ensure that the regulatory requirements are standards of 12 CFR part 621 are consistent with those of generally accepted accounting practices.

Since the regulations were issued in 1986, there have been continued efforts on the part of both the FCA and the Farm Credit System (System) to provide additional guidance in the area of problem loan accounting. However, differences continue to exist which have resulted in financial disclosures of problem loans by System institutions that are not readily comparable to similar disclosures of other financial institutions.

After careful analysis of the issues and before initiating the actual drafting of proposed regulations, the FCA has determined that it would be appropriate and beneficial to solicit input from the System and the public on this project through an advance notice of proposed rulemaking (ANPRM). Accordingly, the FCA requests public comments on the accounting and reporting requirements contained in 12 CFR part 621. Comments received will be considered in the drafting of proposed regulations amending part 621.

The FCA is seeking comment from the public with regard to financial disclosures of problem loans by System institutions, particularly as they relate to the following questions:

(1) The FCA is considering modifying § 621.2 regarding nonperforming loans and the categories within that area. What costs and/or benefits would you foresee if modifications were to be made to this area? Would revising the nonperforming loan categories enhance the usefulness of performance classifications in measuring the risk to System institutions? System institutions are requested to quantify any costs or savings as specifically as possible.

(2) What benefit would be gained by providing financial disclosure of credit quality statistics for the purpose of risk identification, in addition to the current practice of reporting and disclosing loan performance characteristics?

(3) It has been suggested that the FCA regulations pertaining to problem loan disclosure should parallel those prescribed in the Securities and Exchange Commission's (SEC) Industry Guide 3, "Statistical Disclosure by Bank Holding Companies" to promote comparability between System institutions and commercial banks. If 12 CFR part 621 were amended in such a fashion, what impact would this have on the institutions' disclosure of portfolio risk?

(a) For example, if the other high-risk (OHR) category were to be modified or eliminated, what other types of disclosures, if any, would be appropriate to identify those loans previously disclosed in the OHR category?

(b) What alternatives, if any would you propose for the other restructured and reduced rate category?

(4) The FCA is considering expanding existing nonaccrual loan guidelines to provide direction with regard to the treatment of the application of payments on nonaccrual loans, income recognition on nonaccrual loans, and criteria for reinstatement to accrual loan status. The FCA is seeking information on what criteria is currently used by lending institutions in this area, and what criteria should be established.

(5) The FCA is considering modifications to the existing rule of aggregation. The FCA received considerable comment on the rule of aggregation as it was discussed in the proposed lending limit regulations (56 FR 2452, January 23, 1991). The FCA is seeking input as to how the rule of aggregation, as discussed in 12 CFR part 621, relates to performance categories. In particular, when should the rule of aggregation be applied and what criteria should be established regarding what constitutes an independent credit risk?

(6) Please include any other comments relevant to financial disclosures of problem loans by System institutions, particularly as they relate to the above topics.

Dated: December 8, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-30301 Filed 12-11-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-51-AD]

Airworthiness Directives; Aerostar Aircraft Corp. PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) Series (Formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92-11-08, which currently requires replacing or upgrading the main landing gear torque links on certain Aerostar Aircraft Corporation (Aerostar) PA-60-600 and PA-60-700 series airplanes. The Federal Aviation Administration (FAA) has received several reports of fatigue failure of the main landing gear torque links that were installed or upgraded in accordance with AD 92-11-08. The proposed action would require replacing these main landing gear torque links with parts of improved design. The actions specified by the proposed AD are intended to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

DATES: Comments must be received on or before February 23, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-51-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is discussed in the proposed AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, 3608 South Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455-8872. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, S.W., Renton, Washington 98055-4056; Telephone (206) 227-2589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-51-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-51-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92-11-08, Amendment 39-8258 (57 FR 20742, May 15, 1992), currently requires the following on certain Aerostar PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) series airplanes: (1) An inspection to determine whether the main landing gear torque links are both single lug links or a single lug link fitting into a dual lug link; and (2) the installation of a main landing gear torque upgrade kit or the installation of a main landing gear torque link replacement kit depending on the result of the inspection. The actions are accomplished in accordance with the instructions in Aerostar Service Bulletin (SB) No. 746B, dated June 11, 1991, or in accordance with the instructions in the Main Landing Gear Torque Link Replacement Kit, part number (P/N) 765-155 Rev F, which is referenced in Aerostar SB No. 746B. This action superseded AD 80-02-09.

AD 92-11-08 was issued based upon several reports of main landing gear torque links cracking or collapsing on the affected airplanes. Airplanes that are equipped with replacement or upgraded torque links in accordance with that AD have had fatigue failures of these torque links. Aerostar has redesigned and manufactured main landing gear torque links that will help prevent fatigue cracking.

In addition, Aerostar has issued SB No. 746C, dated September 15, 1992, which specifies procedures for installing these improved main landing gear torque links.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be proposed to require installation of these new improved main landing gear torque links in order to prevent loss of directional control of the airplane during ground operation.

Since an unsafe condition has been identified that is likely to exist or develop in other Aerostar PA-60-600 (Aerostar 600) and PA-60-700 (Aerostar 700) series airplanes of the same type design, the proposed AD would supersede AD 92-11-08 with a new AD that would require replacing the existing main landing gear torque links with improved design torque links, P/N 400126-501 and 400126-502 (left main landing gear) and P/N 400126-503 and 400126-504 (right main landing gear). The proposed action would be accomplished in accordance with the Instructions section of Aerostar SB No. 746C, dated September 15, 1992.

The FAA estimates that 800 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $882 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $793,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

Section 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–11–08, Amendment 39–8258 (57 FR 20742, May 15, 1992), and adding the following new airworthiness directive:

Aerostar Aircraft Corporation: Docket No. 92–CE–51–AD. Supersedes AD 92–11–08, Amendment 39–8258.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Numbers
PA–60–600 Aerostar 600	60–0001–003 through 60–0933–8161262.
PA–60–601 Aerostar 601	61–0001–004 through 61–0680–8162157.
PA–60–601P Aerostar 601P	61P–0157–001 through 61P–0860–8163455.
PA–60–602P Aerostar 602P	62P–0750–8165001 through 60–8365021.
PA–60–700P Aerostar 700P	60–8223001 through 60–8423025.

Note 1.—The manufacturing and ownership rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of directional control of the airplane during ground operation caused by torque link failure, accomplish the following:

(a) Replace the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing gear), in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin (SB) No. 746C, dated September 15, 1992.

Note 2.—Aerostar SB No. 746C, dated September 15, 1992, references the availability of Main Landing Gear Torque Link Replacement Kit No. 765–155 revision G. This kit contains the improved torque links and all hardware necessary to install these links. This kit may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 3.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Aerostar Aircraft Corporation, Customer Service Department, 3608 South Davison Boulevard, Spokane, Washington 99204; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 92–11–08, Amendment 39–8258.

Issued in Kansas City, Missouri, on December 8, 1992.

John E. Tigue

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30232 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–50–AD]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd., (Mitsubishi) MU–2B series airplanes. The proposed action would reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. Analysis of service history on the affected airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. The actions specified by the proposed AD are intended to prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane.

DATES: Comments must be received on or before February 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–50–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; Telephone (310) 988–5228; Facsimile (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–50–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–50–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: The FAA's review of the service history of certain Mitsubishi MU–2 series airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. Extreme elevator nose-down trim deflection, if not corrected, could result in loss of control of the airplane.

Mitsubishi has issued Service Bulletin (SB) No. 216, dated September 11, 1992, which specifies procedures for reducing the elevator nose-down trim deflection to a 1-degree to 3-degree range on certain MU–2 series airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to correct the unsafe condition.

Since the condition described is likely to exist or develop in other Mitsubishi MU–2 series airplanes of the same type design, the actions specified by the proposed AD would reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. The proposed action would be accomplished in accordance with the service bulletin described above.

The FAA estimates that 252 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $158,760.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

Mitsubishi Heavy Industries, Ltd.: Docket No. 92–CE–49–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Numbers
MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, and MU–2B–26	008 through 312, 314 through 320, and 322 through 347.
MU–2B–30, MU–2B–35, and MU–2B–36	501 through 651, 653 through 660, and 662 through 696.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane, accomplish the following:

(a) Reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range in accordance with the Instructions section of Mitsubishi Service Bulletin No. 216, dated September 11, 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an

appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 8, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30225 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–173–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, that currently requires certain inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. This action would add a requirement to install an additional thrust reverser system locking feature, which, when accomplished, would terminate the requirement for repetitive inspections and functional checks. This proposal is prompted by results of a recent safety review of the thrust reverser system on these airplanes, which revealed that the installation of additional features to further minimize the likelihood of an in-flight thrust reverser deployment is necessary. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by February 9, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Duven, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion: On September 11, 1991, the FAA issued AD 91–20–09, Amendment 39–8043 (56 FR 46725, September 16, 1991), to require certain inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. That action was prompted by a determination that certain discrepancies in the thrust reverser system on Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines can cause an uncommanded thrust reverser deployment, and a determination that the thrust reverser systems of the Models 767 and 757 series airplanes, equipped with Pratt and Whitney PW4000 and PW2000 series engines, respectively, are similar. The requirements of that AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

Since the issuance of that AD, the FAA has completed a safety review of the thrust reverser system installed on Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines. The results of that review revealed that in-flight deployment of a thrust reverser could result in a significant reduction in controllability of the airplane from that previously considered. Consequently, the FAA has determined that the installation of additional features to further minimize the likelihood of an in-flight thrust reverser deployment is necessary.

The FAA has reviewed and approved Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, that describes procedures for installation of an additional thrust reverser system locking feature (denoted as a synch shaft lock). The locking system is controlled independently of the system's existing electro-mechanical safety features. This additional locking feature has been certified and is installed on new-production Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–20–09 to continue to require certain inspections, adjustments, and functional checks of the engine

thrust reverser system; and modification of the engine thrust reverser directional control valve. The proposed AD would add a requirement to install an additional thrust reverser system locking feature which, when accomplished, would terminate the requirement for repetitive inspections and functional checks. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 211 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 192 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 624 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,589,440, or $34,320 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes the large number of work hours required to accomplish the proposed modification. The 5-year compliance time proposed in paragraph (e) of this notice should allow the synch shaft lock installation to be made coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling. To ensure consistent progress in accomplishing these modifications, the FAA proposes that, during each one-year period after the effective date of the final rule, each operator would be required to modify 20 percent of the affected fleet in its possession during that year. By following this schedule, the FAA estimates that 20 percent of the entire affected Model 757 fleet would be modified within one year after issuance of the final rule, and 40 percent of the fleet would be modified within two years after the effective date of the final rule. This practice would continue until five years after the effective date of the final rule, at which time the entire affected fleet would be modified.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8043 (56 FR 46725, September 16, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–173–AD. Supersedes AD 91–20–09, Amendment 39–8043.

Applicability: Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines; having airplane line numbers 0001 through 0441, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraphs (a), (b), (c), and (d) of this AD restate the requirements of AD 91–20–09, Amendment 39–8043, paragraphs (a), (b), (c), and (d). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–20–09 have been accomplished previously, paragraphs (a), (b), and (c) of this AD do not require those actions to be repeated.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. If any discrepancies are found as a result of these tests or inspections, prior to further flight, correct the discrepancies in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with Section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Within 45 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), submit a report of the proximity sensor gap measurement and other results of the initial tests and inspections required by paragraph (a)(1)(ii) of this AD, both positive and negative, to the Manager, Seattle Aircraft Certification Office (ACO), ANM–100S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Correct any discrepancies prior to further flight, in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

(e) Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992. During each one-year

period of the 5 years after the effective date of this AD, each operator must accomplish this installation on at least 20 percent of the affected fleet in its possession during that year.

(f) Installation of an additional thrust reverser system locking feature, as required by paragraph (e) of this AD, constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30314 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[IA–5–92]

RIN 1545–AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Rescheduling of the date and location of public hearing on proposed regulations; change of date to submit requests to speak and outlines of oral comments.

SUMMARY: This document reschedules the date and location of the public hearing, and changes the date to submit requests to speak and outlines of oral comments for the public hearing on proposed regulations relating to the application of sections 469 and 465 to the bankruptcy estates of individuals.

DATES: The public hearing will be held on Monday, January 25, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, January 4, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA–5–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate) 202–622–8452 or 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** for Monday, November 9, 1992 (57 FR 53304), announced, among other things, that a public hearing relating to the application of section 469 and 465 to the bankruptcy estates of individuals would be held on Thursday, December 17, 1992, beginning at 10 a.m., in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Thursday, December 3, 1992. The proposed regulations were published in the **Federal Register** for Monday, November 9, 1992 (57 FR 53304).

There has been a change in the date and location of the public hearing, and change of date to submit requests to speak and outlines of oral comments. The hearing will be held on Monday, January 25, 1993, at 10 a.m., Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments must be received by Monday, January 4, 1993.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30187 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2612, 2615, 2616, 2622, and 2623

RIN 1212–AA40

Miscellaneous Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: Statutes amending the Employee Retirement Income Security Act of 1974 have made changes in procedures and other rules, including timing and definitional provisions, that affect and, in some cases, override several portions of the Pension Benefit Guaranty Corporation's regulations. This proposed rule would amend parts 2606, 2612, 2615, 2622, and 2623 of the regulations to conform them to current law. It also includes other organizational and procedural amendments and clarifying and technical changes.

DATES: Comments must be received on or before January 13, 1993.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, or hand-delivered to Suite 7200 at the above address between 9 a.m. and 5 p.m., Monday through Friday. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, Suite 7100, at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* In 1986 and 1987, respectively, Congress enacted the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") (Pub. L. 99–272) and the Pension Protection Act ("PPA") (which was part of the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87") (Pub. L. 100–203)) with the aim of

better protecting promised pension benefits and better controlling the costs of the termination insurance program for single-employer plans. Among other things, SEPPAA and the PPA amended various Title IV procedures and other rules, including timing and definitional provisions, in ways that affect and, in some cases override several portions of the PBGC's regulations (29 CFR chapter XXVI). Certain Title I amendments in the Retirement Equity Act of 1984 ("REA") (Pub. L. 98–397) and the Tax Reform Act of 1986 ("TRA '86") (Pub. L. 99–514) also affect provisions of these portions of the regulations, and Congress subsequently clarified a number of previous Title IV amendments in the technical corrections enacted as Subtitle H of Title VII of the Omnibus Budget Reconciliation Act of 1989 ("OBRA '89") (Pub. L. 100–239).

Of particular relevance here are the substantial changes in the rules for voluntary plan termination under ERISA section 4041 (29 U.S.C. 1341) and the liability incurred upon termination under ERISA sections 4062 and 4064 (29 U.S.C. 1362 and 1364). Prior to SEPPAA (which applies to terminations initiated on or after January 1, 1986), a plan administrator was free to terminate a plan under section 4041 at any time, subject to certain procedural requirements, and upon termination of an underfunded plan, Title IV protected only benefits guaranteed by the PBGC. Moreover, plan termination enabled plan sponsors to shift liability for guaranteed benefits to the insurance program because section 4062 included a net worth limitation on liability for plan underfunding.

SEPPAA restricted the right to terminate a "single-employer plan" (*i.e.*, any defined benefit plan that is not a multiemployer plan (subsection (a)(15) of ERISA section 4001 (29 U.S.C. 1301)) and expanded liability upon termination, essentially transferring back to plan sponsors liability for funding promised pension benefits when they are financially able to bear these costs. If a plan is underfunded, the "contributing sponsor" (*i.e.*, the person entitled under subsection (a) of section 404 of the Internal Revenue Code of 1986 ("Code") (26 U.S.C. 404), or that would be so entitled except for the limitations in section 404(a), to receive a deduction for required contributions) and other members of the contributing sponsor's "controlled group" (*i.e.*, a contributing sponsor and all other persons under common control with that contributing sponsor) now must demonstrate that they are in such poor financial condition, or that their single-employer plan costs have become so burdensome, that they cannot realistically continue to maintain the plan for which termination is sought.[1] In other words, "standard termination" under section 4041(b) (for sufficient plans) and "distress termination" under section 4041(c) are the exclusive means of voluntary plan termination (section 4041(a)(1)). See ERISA section 4042 (29 U.S.C. 1342) for the PBGC's authority to institute involuntary termination proceedings.)

SEPPAA also revised a number of the procedural requirements for termination under section 4041, including timing and notification requirements. Among other things, these changes simplified and expedited PBGC review of standard terminations, thereby permitting faster distribution of plan assets where the agency will not be called upon to pay benefits and enabling the PBGC to devote more resources to those terminations that do impose liabilities on the insurance program

The PPA (effective December 17, 1987) further amended Title IV requirements by, among other things, increasing the benefits that, in a standard termination, a plan must be able to satisfy to all "benefit liabilities" (*i.e.*, the benefits of participants and beneficiaries under the plan, within the meaning of subsection (a)(2) of Code section 401 (26 U.S.C. 401)). The PPA also modified the distress termination rules so that (consistent with the change for standard terminations) a contributing sponsor is liable, along with every member of its controlled group, for all unfunded benefit liabilities. In addition, the PPA further restricted the role of the net worth limitation (ERISA section 4062(b)(2)(B) and subsection (a) of section 4068 (29 U.S.C. 1368)).

Upon termination of a single-employer plan under ERISA section 4041(c) or 4042, this liability now runs solely to the PBGC (with the repeal of the section 4049 trust introduced by SEPPAA) (ERISA section 4062(b)(1)). Under subsection (c) of ERISA section 4022 (29 U.S.C. 1322), the PBGC is to pay participants and beneficiaries a portion of their outstanding benefit liabilities (*i.e.*, unfunded benefit liabilities that are not guaranteed benefits; see ERISA section 4001(a)(19)) based on the values of its employer liability recoveries. The amounts paid are allocated in accordance with subsection (a) of ERISA section 4044 (29 U.S.C. 1344).

Implementation of the SEPPAA and PPA rules for voluntary terminations necessitated the complete revision of Parts 2616 and 2617 of the PBGC's regulations. The final rule replacing these regulations appears elsewhere in today's **Federal Register**. (Unless otherwise noted, references in this proposed rule to part 2616 or 2617 regulations are to the new provisions being published today.) Also, as indicated in its Agenda of Regulations Under Development (57 17560, April 27, 1992), the PBGC anticipates further changes in its regulations to implement requirements of REA and TRA '86, as well as the PPA.

Finally, the PBGC notes that the PPA enhanced its enforcement authority by adding section 4071 (29 U.S.C. 1371) to ERISA. As clarified by OBRA '89, section 4071 authorizes the PBGC to assess a penalty when a person fails to provide any notice or other material information required under Subtitle A, B, C, or D of Title IV or section 302(f)(4) or 307(e) of Title I (29 U.S.C. 1082(f)(4) or 1085b(e)), or any regulations prescribed thereunder, within the applicable time limit specified therein. (The penalty is payable to the PBGC and may not exceed $1,000 for each day that the failure continues.) Section 4071 applies to requirements in provisions of ERISA and PBGC regulations discussed below.

Proposed Rule

The PBGC is proposing to amend Parts 2606 (Rules for Administrative Review of Agency Decisions), 2612 (Trades or Businesses Under Common Control), 2615 (Certain Reporting and Notification Requirements), 2622 (Employer Liability for Withdrawals from and Terminations of Single-Employer Plans), and 2623 (Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments)[2] of the regulations to conform their provisions to current law. The proposed amendments also include minor clarifying and technical changes and

[1] SEPPAA substituted "contributing sponsor" and "controlled group" for "employer" terminology in the Title IV provisions that delineate termination requirements and liability. These provisions apply whether or not a single-employer plan is maintained by contributing sponsors that are members of more than one controlled group. (Although this distinction still is relevant for certain purposes, the PBGC no longer uses the term "single employer plan" to distinguish single-employer plans that are maintained by one or more trades or businesses under common control from single-employer plans maintained by trades or businesses not under common control.)

[2] As noted below, updating the terminology in Part 2623 also would make a transition sentence in new § 2616.4(c) unnecessary.

modifications in rules of agency procedure or practice.

Thus, the objectives of the proposed rule are quite limited. The PBGC decided to restrict this rule's scope in order to facilitate their accomplishment. (In the future, the PBGC will be considering whether the requirements of certain of these regulations should be amended to increase agency effectiveness in administering Title IV, as well as amending other parts of the regulations to implement requirements of REA, TRA '86, and the PPA.)

Nevertheless, attaining these objectives does necessitate amendments to a large number of regulatory provisions, and the agency wishes to assure that, as amended, the regulations will reflect current provisions of Title IV and will be internally consistent. Therefore, the PBGC is publishing a notice of proposed rulemaking and giving interested persons an opportunity to submit written comments, as provided in section 553 of the Administrative Procedure Act (5 U.S.C. 553), despite the fact that insofar as these amendments incorporate statutory changes or make minor modifications of existing regulations, advance notice and public procedure might be viewed as unnecessary, and modifications of rules of agency organization, procedure, or practice are exempt from these requirements (5 U.S.C. 553(b) (B) and (A), respectively).

The PBGC invites members of the public to express their views on the adequacy and appropriateness of these amendments. The agency emphasizes, however, that it has sought to restrict this rule to amendments that do not raise significant policymaking questions; to the extent proposed amendments to sections of the regulations include substantive judgments, the PBGC believes that Congress already has resolved the policy issues legislatively (see, *e.g.*, the proposed revision of § 2622.3).

Part 2606—Rules for Administrative Review of Agency Decisions

For the matters specified in § 2606.1(b), Part 2606 of the PBGC's regulations sets forth procedural rules for issuing initial determinations (Subpart B) and for administrative review of those determinations (reconsideration or appeal under subpart C or D, respectively). Regulatory changes since the adoption of these procedural rules (formerly part 2613; 44 FR 42181, July 19, 1979) necessitate technical and clarifying changes. This proposed rule also includes several changes proposed in 1983 (48 FR 22330, May 18, 1983). (Except to the extent addressed herein, the PBGC is withdrawing the 1983 proposed rule.)

The PBGC is proposing to amend § 2606.1 to reflect statutory changes as well as to clarify the application of its regulations. In particular, the scope of part 2606, as set forth in paragraph (b), no longer adequately provides for the types of determinations that the agency decided to subject to the initial determination and administrative review procedures in subparts B through D of part 2606. The proposed rule also would remove an unnecessary sentence in paragraph (a) and clarify paragraph (c) to state that nothing in part 2606 of the regulations limits the PBGC's authority to review a determination to which this part does not apply, either upon request or on its own initiative (*e.g.*, to correct an error), or the procedure utilized in such a review.

The proposed amendments to paragraph (b) include updating the statutory provisions that pertain to various determinations. In paragraphs (b)(1) and (b)(5), the reference to ERISA section 4082(b) (a transitional rule for plans terminating before September 2, 1974) would be deleted as no longer necessary. In paragraphs (b)(6) and (b)(7), references to additional ERISA provisions would be added because Title IV now addresses guaranteed benefits under multiemployer plans in section 4022A (29 U.S.C. 1322a) and includes the aggregate guaranteed benefit limit in section 4022B (29 U.S.C. 1322b). The PBGC also is proposing to amend these paragraphs to reflect the fact that its benefit entitlement decisions (paragraph (b)(6)) now include determinations (as the trustee of terminated plans) that a domestic relations order is or is not a "qualified domestic relations order" (see subsection (d)(3) of ERISA section 206 (29 U.S.C. 1056) and subsection (p) of Code section 414 (26 U.S.C. 414)), and its benefit entitlement and benefit amount decisions (paragraphs (b)(6) and (b)(7)) now include determinations, under ERISA section 4022(c), with respect to outstanding benefit liabilities.

In addition, the PBGC is proposing to amend paragraph (b)(3) and paragraphs (b)(9) through (b)(11) to reflect current statutory provisions. As revised, paragraph (b)(3) would include the determinations that the PBGC may make in a standard or distress termination proceeding under subsection (b) or (c), respectively, of ERISA section 4041 (see new parts 2616 and 2617 of the regulations). All such determinations are subject to reconsideration under subpart C. However, the PBGC believes that administrative review, upon contributing sponsor or controlled group member request, of determinations that the distress criteria in section 4041(c)(2)(B) are not met should be by the Executive Director (or his or her designee) rather than by an official of the Insurance Operations Department (the department that issues initial determinations in this area), and it is proposing to amend §§ 2606.34 and 2606.36 accordingly.

New paragraph (b)(9) would combine previous paragraphs (b)(9) through (b)(11) to avoid unnecessary repetition in describing determinations as to the amount of liability under current law. As revised, paragraph (b)(9) would include such determinations under ERISA sections 4062(b)(1) and 4064 upon termination of a single-employer plan and under ERISA section 4063 (29 U.S.C. 1363) upon withdrawal of a substantial employer from a single-employer plan under multiple controlled groups. Subsection (b)(1) of section 4062 is cited as the provision that now defines the amount of liability to the PBGC upon termination. (Since persons are liable for the total "amount of unfunded benefit liabilities" (as defined in ERISA section 4001(a)(18)), agency determinations of the amount of liability under section 4062(b)(1) do not include net worth decisions (see proposed amendments to part 2622 of the regulations). As indicated above, an aggrieved person still may request that the PBGC review such a decision.)

The proposed amendments to several definitions in § 2606.2 are essentially technical. They are designed to reflect changes in the terminology that Title IV uses to describe certain "aggrieved persons" (*i.e.*, persons that may be adversely affected by PBGC determinations), including, as a "beneficiary", an alternate payee (within the meaning of ERISA section 206(d)(3)(K)) under a qualified domestic relations order (as required by section 206(d)(3)(J)), a single-employer plan's "contributing sponsor", and members of the same "controlled group" as a contributing sponsor (see §§ 2616.2 and 2617.2). These proposed amendments, and amendments to several other part 2606 provisions, also would update the regulations to reflect changes in the terminology used by the PBGC, in particular, the agency's use of "department" (rather than "office") to describe its primary organizational units.

Other proposed amendments would clarify the intended scope of part 2606 provisions. Thus, the PBGC is proposing to amend § 2606.3 to state that this section applies only to agency assistance in obtaining information or

documents in the possession of a party other than the PBGC. (Access to PBGC records may be requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a) in accordance with part 2603 or 2607, respectively, of the regulations.) Similarly, the PBGC is proposing to amend the requirements in § 2606.22 to reflect the exception in § 2606.23(b): When the PBGC orders that an initial determination is effective on the date of issuance, the determination is to state that there is no obligation to exhaust administrative remedies by seeking PBGC review (rather than notify persons of their right to request review pursuant to subpart C or D). (Aggrieved persons still may request that the agency review the determinations in such cases; however, the provisions of Subparts C and D do not apply.)

Part 2612—Trades or Businesses Under Common Control

The PBGC promulgated part 2612 of the regulations to implement the Title IV requirement that, under regulations consistent and coextensive with regulations prescribed under the Code by the Secretary of the Treasury, employees of trades or businesses (whether or not incorporated) which are under common control be treated as employed by a single employer and all such trades and businesses be treated as a single employer (currently ERISA section 4001(b)(1); previously section 4001(b) and erroneously cited in § 2612.1(a) as section 4001d(b)). After the PBGC adopted Part 2612 (41 FR 12302, March 25, 1976), Congress redesignated this requirement and added a requirement that, for single-employer plans, the PBGC's common control determinations for "controlled group" purposes be made under regulations consistent and coextensive with regulations prescribed under the Code by the Secretary of the Treasury (section 4001(a)(14)).

The PBGC is proposing to amend Part 2612 to address the range of common control determinations that the agency must make, as described in revised paragraph (a) of § 2612.1. (See also the proposed addition of "controlled groups" in the title.) In addition to conforming the regulations to accord with the current statutory provisions, the agency is proposing to reorganize this part by replacing the § 2612.2 definition of "trades or businesses (whether or not incorporated) which are under common control" with an expanded § 2612.3. As amended, § 2612.3 would address all agency determinations. The PBGC also is proposing to remove unnecessary language from § 2612.1(b) and to update, correct, and conform other definitions in § 2612.2

Part 2615—Certain Reporting and Notification Requirements

The PBGC promulgated part 2615 of the regulations to implement ERISA section 4043 (29 U.S.C. 1343) (formerly part 2617; 45 FR 55636, August 20, 1980). Except to the extent that the PBGC exercises its waiver authority, section 4043 requires the reporting of various specified events and any other event that the PBGC determines may be indicative of a need to terminate the plan. Statutory changes since the PBGC's last rulemaking on these requirements (49 FR 22472, May 30, 1984) necessitate technical and clarifying changes. In particular, for consistency with current regulatory requirements and to avoid confusion about the applicability of a number of the reportable event requirements, the terminology used should be changed (see, *e.g.*, proposed amendments to §§ 2615.3 (b) and (c), 2615.5, and 2515.23(a)).

The PBGC notes that it is proposing these changes to reflect, in language consistent with the statue as amended, the requirements that the agency intended when it promulgated various provisions. The PBGC still is considering whether to propose that certain of these requirements be modified to assure that the agency is notified of events that may indicate the need to terminate a plan.

The PBGC also notes that it recently amended this part of the regulations by designating the reportable events requirements as subpart A and adding subpart B to address notification of failures to make required contributions (implementing subsection (f)(4) of ERISA section 302 and subsection (n)(4) of Code section 412 (26 U.S.C. 412)), and (as appropriate) any future rules implementing other notification requirements (56 FR 57977, November 15, 1991; effective January 1, 1992). (The PBGC did not receive any comments that warrant modification of that interim final rule and, on October 23, 1992, published a final rule (57 FR 48317) that redesignates the new section as § 2615.31.)

Based on pre-SEPPAA voluntary termination requirements (see *e.g.*, old § 2616.3), the PBGC limited application of part 2615 (now subpart A) to plans "for which a Notice of Intent to terminate under section 4041 has not been filed with the PBGC." However, as the agency noted in its proposal to revise the termination regulations (52 FR 33318, 33326, September 2, 1987), the PBGC no longer receives a notice of intent to terminate in a standard termination (see ERISA section 4041(a)(2)) and the notice of intent to terminate in a distress termination contains little of the information required to be provided under prior law. Moreover, under prior law, a plan administrator could file the Notice of Intent to Terminate as little as 10 days before the proposed date of plan termination, whereas current law requires issuance of notices of intent to terminate at least 60 days before the proposed termination date specified therein and the PBGC's revised regulations permit a plan administrator to extend that period (to up to 90 days) in the standard or distress termination notice subsequently filed with the PBGC (see §§ 2616.2, 2616.22, 2616.26, 2617.2, 2617.22, and 2617.25).

In addition, under current law, the PBGC may not proceed with a plan termination that would violate the terms of an existing collective bargaining agreement (section 4041(a)(3)). Therefore, the PBGC will suspend a termination proceeding if timely advised that a formal challenge to plan termination has been initiated and, depending upon the final resolution of the challenge, either dismiss the proceeding or, should the plan administrator wish to do so, reactivate it (see §§ 2616.5 and 2617.5.)

In view of these developments, the PBGC is proposing to amend paragraph (b) to provide that subpart A applies to single-employer plans for which no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified in accordance with regulatory requirements. Also, if a termination proceeding is suspended pursuant to the regulations, subpart A would continue to apply unless and until the PBGC reactivates the proceedings, thereby accounting for the possibility that a significant period of time may pass before resolution of the challenge and a decision as to whether or not the proposed termination will go forward.

The PBGC is proposing to amend § 2615.2 to correct and conform the definitions of various terms. The changes include proposed amendments to update statutory references (*e.g.*, the "Code" definition), to assure consistency with other regulations (*e.g.*, the "participant", "controlled group", "irrevocable commitment", and "notice of intent to terminate" definitions), and to delete unnecessary terms. Certain of the terms to be deleted are not used in the regulations, either as now codified (*e.g.*, "Social Security benefits") or as

they would be amended (*e.g.*, "single employer plan"). Others will be unnecessary if the amended regulations adequately address terminology questions elsewhere (*e.g.*, the meaning of "bankruptcy case", in amended §§ 2615.3(c)(5) and 2615.21(a)(1)).

Because the implications of an event for the need to terminate a single-employer plan may differ depending on whether it is maintained by multiple "contributing sponsors" that are not members of the same "controlled group" (as the PBGC uses these terms; see §§ 2616.2 and 2617.2), certain reportable event requirements distinguish plans which are not "maintained by two or more contributing sponsors that are members of more than one controlled group" from those which are so maintained. (As indicated above, the PBGC previously described the former category as "single employer plans".) The PBGC is proposing to retain this distinction, describing plans in the former category as "maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group", in amendments to §§ 2615.3(c)(2), 2615.14(b)(2), 2615.21(a), 2615.22(a), and 2615.23(a), as well as in paragraph (c)(2) of § 2615.14, which would replace the definition of "active participant".

Since § 2615.14 addresses the only reportable event for which "active participant" is relevant, the PBGC's tentative judgment is that any special usage of this term should be included in that section rather than in § 2615.2. With respect to plans maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, paragraph (c)(2) of amended § 2615.14 would include the same individuals as those who currently are described in the (a) portion of the definition. With respect to plans maintained by two or more contributing sponsors that are members of more than one controlled group, however, the PBGC believes that a special provision no longer is needed because the (b) portion of the current § 2615.2 definition covers the same individuals as those who generally are categorized as "active" participants (see § 2610.2, which would be referenced in amended § 2615.2).

Other proposed technical changes include updating amendments (*e.g.*, replacement of the statutory citation in § 2615.22(c) and the "Plan Number", PBGC organization, and form references in §§ 2615.3(b)(4), 2615.3(e), and 2615.14(b) and 2615.16(b), in that order) and clarifying the date of distribution of an irrevocable commitment (§ 2615.18(d)). They also include proposed changes for consistency with the wording and structure of this subpart (*e.g.*, moving the waiver criterion from paragraph (a) to paragraph (b) of § 2615.14). Finally, the PBGC notes that in the rule adding § 2615.30 to the regulations, the agency expanded paragraph (b) of § 2615.16 to add instances in which the form required by § 2615.30 (PBGC Form 200) has been submitted, in accordance with that section, with respect to the same failure.

Part 2622—Employer Liability for Withdrawals From and Terminations of Single-Employer Plans

The PBGC adopted part 2622 of the regulations primarily to prescribe rules for "employer liability" determinations and recovery under ERISA section 4062 and section 4067 (29 U.S.C. 1367) (formerly part 2613; 46 FR 9520, January 28, 1981). Portions of this part also apply to determinations under the special rules of ERISA sections 4063 and 4064 for withdrawal of a "substantial employer" from or termination of a plan (other than a multiemployer plan) under which more than one "employer" made contributions.

Significant changes in part 2622 provisions are necessary to reflect subsequent statutory amendments. In particular, whenever a single-employer plan is terminated, "any person who is, on the termination date, a contributing sponsor * * * or a member of * * * a contributing sponsor's controlled group" is liable to the PBGC for the total amount of unfunded benefit liabilities, together with interest (section 4062 (a) and (b)). Moreover, the collective net worth of these persons is relevant only to whether the entire liability is payable as of the termination date (section 4062(b)(2)(B)) and to the amount of the lien that ERISA section 4068(a) imposes for nonpayment. Other changes are being proposed in view of the current timing requirements for distress terminations under ERISA section 4041(c) and new part 2616 of the regulations and to update the terminology used in this part of the regulations.

As revised, § 2622.1 would summarize current provisions of subtitle D of title IV (paragraph (a)), focusing on liability to the PBGC under ERISA section 4062(b) upon single-employer plan termination and also describing the supplementary rules in ERISA sections 4063 and 4064 upon "substantial employer" withdrawal and termination for plans with two or more contributing sponsors at least two of whom are not under common control. The PBGC uses the term "multiple employer plan" to describe this category of single-employer plans and no longer uses the term "single employer plan" to describe other single-employer plans (see proposed amendments to § 2622.2; see ERISA section 4001(a)(2) and § 2616.2 of the regulations).

The statutory rules on the amount of liability to the PBGC that are reflected in this portion of the proposal apply with respect to plans for which voluntary or involuntary termination is initiated after December 17, 1987 (paragraph (b)). (For a termination initiated before that date but on or after January 1, 1986, see the discussion of liability under Title IV as amended by SEPPAA (for unfunded "benefit commitments" in excess of guaranteed benefits) in the PBGC's proposed rule on voluntary terminations (52 FR 33318, 33320, and 33327, September 2, 1987).)

In § 2622.2, the PBGC is proposing to add the term "section 4062(b) liability" to describe the liability to the PBGC now imposed by ERISA section 4062 (see subsections (a) and (b)). The new term "collective net worth of persons subject to liability in connection with a plan termination" and the revised definitions of the terms "net worth" and "net worth record date" would reflect the provisions of section 4062(d)(1), as implemented in §§ 2622.4 and 2622.5, as amended. Other proposed amendments to § 2622.2 would add terms now used in subtitle D of Title IV and/or new part 2616 (*e.g.*, "proposed termination date"), delete terms that are not needed in this part of the regulations (*e.g.*, "employer" and "Title IV"), and make minor technical and editorial changes (*e.g.*, amendments to the definition of "Act").

As revised § 2622.3 would state, in paragraphs (a) and (b), respectively, the statutory rules on the amount of section 4062(b) liability and the payment of that liability, including the PBGC's authority to make alternative arrangements for the satisfaction of liability (see ERISA sections 4062(b)(3) and 4067). Since net worth does not affect the amount of liability, this section, as amended, would not address net worth notification or determinations. (Similarly, the PBGC is proposing to delete the last sentence of § 2622.6(c).)

The exception in proposed paragraph (b) reflects the limitation on the general rule that section 4062(b) liability is due and payable as of the termination date: Under section 4062(b)(2)(B), payment of so much of the liability as exceeds 30 percent of the collective net worth of all persons described in section 4062(a) is to be made under commercially

reasonable terms prescribed by the PBGC. The PBGC is proposing to set forth the statutory rules for such cases in paragraph (c) of § 2622.8.

The statutory definition of "collective net worth of persons subject to liability in connection with a plan termination" (section 4062(d)(1)) incorporates pre-SEPPAA rules, including the requirement that net worth determinations be computed without regard to any liability under section 4062 (section 4062(d)(1)(C)). These statutory rules now are applied to each "person" that is subject to such liability. The PBGC is proposing to amend provisions of §§ 2622.4 through 2622.6 accordingly. (See also the proposed amendments to §§ 2622.7 through 2622.9, which include changes for consistency with other statutory phrasing as well.)

The collective net worth of such persons is the sum of the individual net worths of those with individual net worths that are greater than zero (section 4062(d)(1)(A)). Revised paragraph (a) of § 2622.4 would provide that the PBGC will determine individual net worths and collective net worth when, as under the current regulations, liable persons notify the agency and submit net worth information. (See § 2622.6(c) regarding incomplete submissions.)

The statutory definition now also provides for the timing of net worth determinations (subsection (d)(1)(C)). The existing net worth record date requirements of § 2622.5 are consistent with the statutory rule that "determinations * * * be made as of a day chosen by the [PBGC] (during the 120-day period ending with the termination date)." Therefore, the PBGC is proposing only technical and editorial amendments to § 2622.5.

The PBGC is proposing to expand § 2622.6 to include in paragraph (a) net worth notification, now addressed in § 2622.3(b), as well as net worth information submission, and it is proposing to move the information specifications (subparagraphs (1) through (7)) from paragraph (a) to paragraph (b) and make several editorial changes. Notification and information submission requirements that apply to an "employer who believes that 30 percent of * * * net worth is less than the plan asset insufficiency" would be amended to refer to a "contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination" (*i.e.*, that the liability under current section 4062(b) is subject to the exception to the general rule on payment) (paragraph (a)(1)). However, if a contributing sponsor or member of the contributing sponsor's controlled group complies, the PBGC would consider these requirements to be satisfied by all members of that controlled group, while reserving the authority to require any person subject to liability to submit information (paragraphs (a)(2) and (a)(3)).

As discussed above, the statutory requirements for voluntary termination of an insufficient plan, as implemented in new part 2616, are significantly different from those that applied when the PBGC promulgated this part of the regulations. A plan can terminate under ERISA section 4041(c) only if financial hardship is demonstrated [3] and other requirements are met. Among other things, the notice of intent to terminate that is filed with the PBGC (PBGC Form 600) must identify the distress criterion that each contributing sponsor and member of a contributing sponsor's controlled group expects to meet and must provide documentation regarding any relevant liquidation or reorganization proceedings; and the distress termination notice (PBGC Form 601), which is due by the 120th day after the proposed termination date (see § 2616.24(a)), must include the information required to prove each such person satisfies one of the distress criteria. Thus, substantial analysis of the financial condition of liable persons should have occurred by the time notices of intent to terminate are issued, either in planning for distress termination or as part of another proceeding, and further financial and other business information must be compiled within the next few months.

In view of the above, the PBGC believes that the time limits it established in 1981 are inappropriate when a plan is being terminated under ERISA section 4041(c). Therefore, it is proposing, in subparagraph (1) of § 2622.6(a), to reflect subsequent changes in the regulatory scheme and coordinate part 2622 with the requirements in new Part 2616 in future distress terminations.

As amended, the regulations would require contributing sponsors and controlled group members that believe section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination to so notify the agency by the 90th day after filing of the notice of intent to terminate with the PBGC and to submit net worth information by the 120th day after the proposed termination date (*i.e.*, by the deadline for filing the distress termination notice) (subparagraphs (1)(i) and (1)(ii)(A)). The PBGC believes that these periods will provide comparable time with respect to plans being terminated in distress terminations, and they are consistent with the agency's rationale in promulgating this part of the regulations.[4]

Under amended § 2622.6(a)(1), the time limits established in 1981 would continue to apply with respect to plans for which termination is initiated by the PBGC instituting proceedings under ERISA section 4042 (subparagraphs (1)(i) and (1)(ii)(B)). However, in the PBGC's judgment, the regulations no longer need emphasize when a plan's termination date is established (*i.e.*, upon the execution by all signatories of a trusteeship agreement or the issuance of a court order decreeing the plan terminated). Therefore, it is not proposing to include the last sentence of current § 2622.3(b) in amended § 2622.6(a)(1).

The PBGC is proposing to address when the net worth information specified in this section must be submitted within a shorter period and when additional information must be submitted in paragraph (a)(3) of § 2622.6. In this provision, the PBGC's objective is to consolidate and streamline existing regulatory provisions, but not to change the conditions that will result in the agency requiring such submissions. (Thus, for example, the agency believes it is not necessary to state in the regulations that one situation in which it may need additional information is when the PBGC establishes an earlier net worth record date after submission of the information specified in this section (see current §§ 2622.5(c) and 2622.6(b)).) In addition, as amended, § 2622.6(a)(3) would provide that the PBGC will specify the time within which a person subject to liability is required to submit information.

[3] See ERISA section 4041(c)(2)(B) and § 2616.3(d)(1) through (4) of the regulations for the four distress criteria: liquidation, reorganization, inability to continue in business, and unreasonably burdensome pension costs.

[4] In 1981, the PBGC expected that establishment of a plan's termination date "typically would not occur until some weeks after" the agency received a notice of intent to terminate (46 FR 9521), and "the employer will usually have 160–180 days, or more, after submitting . . . [that] notice to submit the net worth information" (46 FR 9524). Under new Part 2616, the 90th day after issuance of the notice of intent to terminate generally is the latest proposed termination date permitted (§§ 2616.2 and 2616.22(a)(1)), and the 120th day after the proposed termination date is 180 to 210 days after issuance of the notice of intent to terminate.

The distress termination requirements discussed above also increase the possibility that information required to be submitted pursuant to § 2622.6 already has been submitted to the PBGC. Therefore, the PBGC is proposing to add a provision, paragraph (a)(4), designed to avoid duplicative efforts: A person may respond to such a requirement by identifying a previous submission.

ERISA section 4062(b) now provides that liability to the PBGC includes "interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the [PBGC]." Since paragraphs (a) and (c) of § 2622.7 currently impose interest on the unpaid portion of the liability (if any) at the rate prescribed in Code section 6601(a), the PBGC is proposing only technical and editorial changes in these paragraphs. Other proposed amendments would update § 2622.7 by modifying the terminology and deleting provisions for the calculation of pre-1983 interest (see also § 2622.8(d), as amended).

As noted above, the PBGC is proposing to expand § 2622.8 to address payment, under commercially reasonable terms, of the portion of section 4062(b) liability that exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination (see section 4062(b)(2)(B)), as well as the exercise of its discretion to defer payment of liability upon request. Revised paragraph (c) would set forth the rules for cases in which the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of all liable persons. The PBGC's standards and factors for determining what, if any, deferred payment or other terms for the satisfaction of liability to grant and the procedure for requesting such action, which currently are in paragraphs (a) through (c), would be included in revised paragraph (b). As amended, these rules would apply to persons that are or may become liable under ERISA section 4062, 4063, or 4064 and provide for updating information when a request is made one year or more after the net worth record date.

The PBGC also is proposing to amend paragraphs (a) and (b) of § 2622.9 to provide that its requests and demands for liability indicate that the agency will prescribe commercially reasonable terms for payment of so much of the liability that exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The proposed amendments to this section and § 2622.10 include other updating and editorial changes. In particular, the PBGC is proposing to amend § 2622.10(b) to require that liability payments be sent to the address specified in the notification or demand for liability issued under § 2622.9 or, if not specified therein, to the address provided (upon request) by the PBGC's Investment Management Division.

Part 2623—Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments

The PBGC promulgated Part 2623 of the regulations to minimize benefit overpayments by the administrators of plans that ultimately will be trusteed by the PBGC under ERISA section 4042 because they are insufficient for guaranteed benefits (subpart B) and to provide rules for the recoupment of benefit overpayments and reimbursement of benefit underpayments when the PBGC is appointed trustee (subpart C). As discussed above, when the agency adopted these regulations (50 FR 3892, January 29, 1985), the statutory requirements for voluntary termination were significantly different than they are today. Among other things, ERISA section 4041 did not address the payment of plan benefits after termination is initiated, and the proposed date of termination specified by a plan administrator might be only 10 days after the filing of a Notice of Intent to Terminate.

Section 4041(c)(3)(D) now includes specific requirements for plan administration during the pendency of a distress termination under ERISA section 4041(c). The PBGC is implementing these requirements, as well as notice and information requirements, in new Part 2616 of the regulations. Therefore, this rule includes proposed amendments to limit the functions of subpart B of part 2623 and to coordinate its provisions with the requirements of section 4041(c) and part 2616. Among these are changes to reflect current timing requirements and to update the terminology used in both subparts B and C.

In addition, as indicated in its Agenda of Regulations Under Development, the PBGC plans to issue a new part of the regulations on the payment of benefits in PBGC-trusteed plans (57 FR 17562). Because the PBGC believes that benefit payment regulations should address recoupment and reimbursement, it plans to transfer subpart C of part 2623 to that part of the regulations, and it expects to consider further amendments to subpart C provisions during the development of benefit payment regulations.

The PBGC is proposing to amend the title of part 2623 and § 2623.1 to reflect, in current terminology (provided by proposed amendments to § 2623.2), the subjects addressed by this part of the regulations and to eliminate unnecessary language. As indicated in the proposed amendment to paragraph (a) of § 2623.1, the procedures in subpart B apply to plans that are terminating in a "distress termination" and, hence, generally are not expected to be "sufficient for guaranteed benefits"; those in subpart C apply to recoupment and reimbursement of benefit payments under any "PBGC-trusteed plan".

The proposed amendments to § 2623.2 would add several terms ("guaranteed benefit" as well as those just noted) and replace terms no longer used. The PBGC is proposing to substitute "proposed termination date" for "section 4041(a) date of termination" and "termination date" for "section 4048 date of termination" (see proposed amendments to §§ 2623.5, 2623.6, 2623.7, 2623.11, and 2623.12). (Since the substitution of "proposed termination date" for "section 4041(a) date of termination" would make the last sentence of new § 2616.4(c) unnecessary, the PBGC is proposing to delete it.)

Because paragraphs (b), (c), and (e) of new § 2616.4 include the actions prohibited during distress termination proceedings and the rules for when "benefit payments" must be reduced, the PBGC is proposing to amend § 2623.5 by deleting paragraphs (e) and (f)(1) (and redesignating the remainder of paragraph (f) as paragraph (e)) and the timing and applicability conditions in paragraph (a). As revised, § 2623.5(a) would describe the restricted role that this subpart now plays: Providing the methodology for determining benefits that plan administrators may not pay (§ 2623.5 (b) and (c)) and must pay (§§ 2623.5(d), 2623.6, and 2623.7) when § 2616.4 requires that benefit payments be limited.

The PBGC is proposing to delete references to when benefit payment limitations apply from paragraphs (b) through (d) of § 2623.5 as well. In addition, the proposed rule includes updated examples in paragraph (g) (which would be redesignated as paragraph (f) of § 2623.5 and §§ 2623.6(e) and 2623.7(e). (For example, the PBGC has removed obsolete material and used the maximum guaranteeable benefit payable for plans terminating in 1992 in the revised examples. (See 56 FR 64984, December 13, 1991, for the final rule

adding the 1992 amount ($2,352.27) to part 2621, appendix A.)

No change is proposed in the § 2623.5(d) requirement that plan administrators "pay the monthly benefit * * * determined under § 2623.6 or § 2623.7, whichever produces the higher benefit." Therefore, the PBGC is proposing to remove the last sentence of paragraph (a) of § 2623.6 (the procedures for computing estimated guaranteed benefits) and the last sentence of paragraph (a) of § 2623.7 (the procedures for computing estimated Title IV benefits) as redundant.

The other noteworthy amendment to subpart B would be the removal of § 2623.8. The PBGC is proposing to delete this section because, in implementing the requirements of ERISA section 4041(a)(2) and (c) (1) and (2), the agency has addressed the information needs of both participants and the agency elsewhere (see new part 2616).

Finally, the proposed amendments to subpart C include, in addition to conforming terminology and timing changes, the substitution of "PBGC-trusted plan" for "terminated insufficient plan" in § 2623.11 (a) and (b). The PBGC generally is appointed trustee when a plan is not sufficient for guaranteed benefits. However, the PBGC may be appointed trustee of a plan that is sufficient for guaranteed benefits, and the subpart C procedures are intended to apply in such situations.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a "major rule" for the purposes of Executive Order 12291 because it would not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The primary purpose of these proposed amendments is to conform the regulations to existing statutory requirements. The proposed rule also includes other, minor modifications of existing regulations.

For the same reasons, the PBGC certifies that, if adopted, this proposed rule will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 2606

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Part 2612

Business and industry, Pension insurance, Pensions, Small businesses.

29 CFR Part 2615

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2616

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting requirements, Small businesses.

29 CFR Part 2623

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is proposing to amend 29 CFR parts 2606, 2612, 2615, 2616, 2622, and 2623 as follows:

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 2606 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§ 2606.1 [Amended]

2. Paragraph (a) of § 2606.1 is amended by removing the last sentence.

§ 2606.1 [Amended]

3. Paragraphs (b) and (c) of § 2606.1 are amended by removing "or section 4082(b)" in paragraph (b)(1) and paragraph (b)(5); by adding "or (c) or section 4022A(a)" after "section 4022(a)" and by adding "and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of the Act and section 414(p) of the Code" after "covered plans" and before the semicolon in paragraph (b)(6); by adding "or (c), section 4022A(b) through (e), or section 4022B" after "section 4022(b)" and by removing "guaranteed benefits of" and adding, in its place, "benefits payable to" in paragraph (b)(7); by adding "and" at the end in paragraph (b)(8); by removing paragraph (b)(10) and paragraph (b)(11); and by revising paragraphs (b)(3), (b)(9), and (c) to read as follows:

§ 2606.1 Purpose and scope.

* * * * *

(b) *Scope.* * * *

(3) Determinations with respect to voluntary terminations under subsection (b) (standard terminations) or subsection (c) (distress terminations) of section 4041 of the Act, including—

(i) A determination that a notice requirement under section 4041(b)(1)(A) or (B) or section 4041(c)(1)(A) or (B) or a certification requirement under section 4041(b)(3)(B) or section 4041(c)(3)(B) of the Act has not been met,

(ii) A determination that a contributing sponsor or a member of a contributing sponsor's controlled group does not meet the requirements for demonstrating distress under section 4041(c)(2)(B) of the Act, and

(iii) A determination under section 4041(b)(2) or section 4041(c)(3) of the Act with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits;

* * * * *

(9) Determinations of the amount of liability under section 4062(b)(1), section 4063, or section 4064 of the Act.

(c) *Matters not covered by this part.* Nothing in this part limits—

(1) The authority of the PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, the PBGC determines that it would be appropriate to do so, or

(2) The procedure that the PBGC may utilize in reviewing any determination to which this part does not apply.

4. In § 2606.2, the definition of *Act* is amended by adding ", as amended" at the end before the period; the definition of *Director* or *Office Director* is amended by removing *"Office"* and adding, in its place, *"Department"* and by removing "office" and adding, in its place "department"; and the definition of *aggrieved person* is revised and a definition of *Code* is added to read as follows:

§ 2606.2 Definitions.

* * * * *

Aggrieved person means any participant, beneficiary, plan administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of

the PBGC with respect to a pension plan in which such participant, beneficiary, plan administrator, contributing sponsor, controlled group member, plan sponsor, or employer has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of the Act) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of the Act). The term "contributing sponsor" includes only a person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to a single-employer plan under section 302 of the Act and section 412 of the Code. The term "controlled group" includes all persons under common control with a contributing sponsor and the term "employer" includes all trades or businesses under common control, as provided in subsections (a)(14) and (b)(1) of section 4001 of the Act and part 2612 of this chapter.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

* * * * *

§ 2606.3 [Amended]

5. Section 2606.3 is amended by removing "data" each time it appears and adding, in its place, "documents"; by removing "the information" at the end of the first sentence before the period and adding, in its place, "information or documents in the possession of a party other than the PBGC"; and by adding "or documents" at the end of the second sentence before the period.

§ 2606.7 [Amended]

6. Section 2606.7 is amended by removing "an Office" and adding, in its place, "a Department" and by removing "by the PBGC" at the end before the period.

§ 2606.9 [Amended]

7. Section 2606.9(b) is amended by removing "Office" and adding, in its place, "department".

§ 2606.22 [Amended]

8. Section 2606.22 is amended by adding ", except when effective on the date of issuance as provided in § 2606.23(b)," before "shall contain".

§ 2606.34 [Amended]

9. Section 2606.34 is amended by removing "office" and adding, in its place, "department" and by adding, at the end before the period, ", except that a request for reconsideration of a determination described in § 2606.1(b)(3)(ii) shall be submitted to the Executive Director".

§ 2606.36 [Amended]

10. Paragraph (a) of § 2606.36 is amended by removing "office" both times it appears and adding, in its place, "department"; by removing "an Office" and adding, in its place, "a Department"; by removing "the Office" both times it appears and adding, in its place, "the Department"; and by adding, at the end of the second sentence before the period, "of a determination other than one described in § 2606.1(b)(3)(ii), and the Executive Director (or an official designated by the Executive Director) will issue the final decision on a request for reconsideration of a determination described in § 2606.1(b)(3)(ii)".

§ 2606.51 [Amended]

11. Section 2606.51 is amended by removing "(11)" and adding, in its place, "(9)".

PART 2612—TRADES OR BUSINESSES UNDER COMMON CONTROL; CONTROLLED GROUPS

12. The authority citation for part 2612 is revised to read as follows:

Authority: 29 U.S.C. 1301(a)(14), 1301(b)(1), and 1302(b)(3).

13. The title of part 2612 is amended as set forth above.

14. Paragraph (a) of § 2612.1 is revised to read as follows:

§ 2612.1 Purpose and scope.

(a) *Purpose.* This part includes the regulations under which, for purposes of Title IV of the Act, the PBGC determines the trades or businesses (whether or not incorporated) that are under common control and, hence, treated as a single employer and whether, in the case of a single-employer plan, two or more persons are under common control and, hence, members of the same controlled group. Section 4001 of the Act requires, in subsections (b)(1) and (a)(14), respectively, that the former and the latter determinations be made under PBGC regulations which are consistent and coextensive with regulations prescribed by the Secretary of the Treasury under section 414(c) and section 414 (b) and (c), respectively, of the Code.

* * * * *

§ 2612.7 [Amended]

15. Paragraph (b) of § 2612.1 is amended by adding "*Scope.*" at the beginning after paragraph (b) designation; by removing "(88 Stat. 1014)"; and by removing everything after "applies" and before the period.

16. In § 2612.2, the definition of *Act* is amended by removing "Means" and adding, in its place, "means" and by removing "(88 Stat. 829 *et seq.*)" and adding, in its place, ", as amended"; the definition of *trades or businesses (whether or not incorporated) which are under common control* is removed; and definitions of *Code* and *single-employer plan* are added, in alphabetical order, to read as follows:

§ 2612.2 Definitions.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

17. Section 2612.3 is amended by adding "; controlled groups" after "control" in the title; by removing the comma after "Act", adding a colon in its place, and designating the remainder of the current text as paragraph (a)(2) and republishing it; and by adding new paragraphs (a)(1), (a)(3), and (b) and the introductory text is republished to read as follows:

§ 2612.3 Trades or businesses under common control; controlled groups.

For purposes of Title IV of the Act:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

(2) All employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with that person.

(2) The PBGC will determine that persons are under common control if they are members of a "controlled group of corporations", as defined in

regulations prescribed under section 414(b) of the Code, or if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

PART 2615—CERTAIN REPORTING AND NOTIFICATION REQUIREMENTS

18. The authority citation for part 2615 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, and 1365.

19. In § 2615.1, paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 2615.1 Purpose and scope.

(a) *Purpose.* This subpart prescribes specific requirements for notification of the reportable events in section 4043 of the Act, including the reportable events specified in section 4043(b)(1) through (b)(8) and other events that the PBGC has determined, under section 4043(b)(9), may be indicative of a need to terminate the plan. It also implements the PGBC's authority to waive the requirement that plan administrators notify the PBGC with respect to certain reportable events and with respect to certain plans.

(b) *Scope.* This subpart applies with respect to any single-employer plan (within the meaning of section 4001(a)(15) of the Act) which is covered by section 4021 of the Act and for which either no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified under section 4041 (b) or (c) of the Act and parts 2616 or 2617 of this subchapter; *Provided, That,* if a termination proceeding is suspended pursuant to § 2615.5 or § 2617.5 of this subchapter, this subpart continues to apply unless and until the PBGC reactivates the termination proceeding. * * *

20. In § 2615.2, the definition of *Act* is amended by removing "(29 U.S.C. 1001 *et seq.* (1976))" and adding, in its place, ", as amended"; the definition of *active participant* is redesignated as paragraph (c)(2) of § 2615.14; the definition of *Code* is amended by removing "1954" and adding, in its place, "1986"; the definition of *irrevocable commitment* is amended by removing "which" the first time it appears and adding, in its place, "if the obligation", by removing "which" the second time it appears, and by removing "against the insurer"; the definition of *nonforfeitable benefits which are not funded* is amended by adding "section 4001(a)(8) of the Act and as provided in" after "as defined in"; the definition of *plan* is amended by removing "be a single employer, multiemployer, or multiple employer plan" and adding, in its place, "is maintained by one or more contributing sponsors"; the definition of *plan year* is amended by removing "; policy"; the definition of *substantial owner* is amended by removing "4022(b)(6)(A)" and adding, in its place, "4022(b)(5)(A)"; the definitions of *bankruptcy case, break in service, employer, money purchase plan, normal retirement benefit, plan sponsor, Railroad Retirement benefits, single employer plan, Social Security benefits,* and *Title IV* are removed; and the definitions of *contributing sponsor, controlled group,* and *participant* are revised and definitions of *notice of intent to terminate* and *proposed termination data* are added, in alphabetical order, to read as follows:

§ 2615.2 Definitions.

* * * * *

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under part 2612 of this chapter.

* * * * *

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 or § 2617.22 of this subchapter.

* * * * *

Participant has the same meaning as in § 2610.2 of this chapter.

* * * * *

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice or the standard termination notice, in accordance with section 4041 of the Act and part 2616 of part 2617 of this subchapter.

* * * * *

§ 2615.3 [Amended]

21. Paragraph (b)(2) of § 2615.3 is amended by removing the word "plan" and adding each time it appears, in its place, "contributing".

§ 2615.3 [Amended]

22. Paragraph (b)(4) of § 2615.3 is amended by removing "plan sponsor" both times it appears and adding, in its place, "contributing sponsor"; by removing "Plan Identification Number (PIN)" and adding, in its place, "Plan Number (PN)"; and by removing "EIN-PIN" both times it appears and adding, in its place, "EIN–PN".

§ 2615.3 [Amended]

23. Paragraph (c)(2) of § 2615.3 is amended by removing "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group,".

§ 2615.3 [Amended]

24. Paragraph (c)(5) of § 2615.3 is amended by removing "a bankruptcy or liquidation" and adding, in its place, "bankruptcy and insolvency".

§ 2615.3 [Amended]

25. Paragraph (c)(6) of § 2615.3 is amended by removing "of employer" and adding, in its place, "in the same controlled group as a contributing sponsor"; by removing ", or of the trade or business no longer controlled by the contributing sponsor, or of the new trade or business controlling" and adding, in its place, "or of the person no longer under common control with"; and by removing ", and of the trade or business no longer controlled by the contributing sponsor, or the new trade or business controlling" and adding, in its place, "and of the person no longer under common control with".

§ 2615.3 [Amended]

26. Paragraph (e) of § 2615.3 is amended by removing "Office of Program Operations" and adding, in its place, "Case Operations and Compliance Department" and by removing "Room 5300A" and adding, in its place, "Room 5500 (Code 45100)".

§ 2615.5 [Amended]

27. Section 2615.5 is amended by removing "employer" and adding, in its place, "contributing sponsor" in the title and by removing "an employer making contributions" and adding, in its place, "a contributing sponsor" in the text.

§ 2615.12 [Amended]

28. Sections 2615.12(a), 2615.15(a), and 2615.16(a) are amended by removing "the plan" and adding, in its place, "a plan".

§ 2615.14 [Amended]

29. Paragraph (a) of § 2615.14 is amended by removing everything after "previous plan year" and before the period.

30. Paragraph (b) of § 2615.14 is amended by removing in the introductory text "either paragraph (b)(1) or (b)(2)" and adding, in its place, "paragraph (b)(1), (b)(2), or (b)(3)" and by adding a new paragraph (b)(3) to read as follows:

§ 2615.14 Active participant reduction.

* * * * *

(b) * * *

(3) The present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500–C/R) is less than $250,000.

* * * * *

§ 2615.14 [Amended]

31. Paragraph (b)(2) of § 2615.14 is amended by removing "single employer plan, as" and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, as" and by removing "the single employer plans covered by section 4021 that are maintained by the employer" and adding, in its place, "the plans covered by this part that are maintained by a contributing sponsor and all members of the same controlled group, if any, either"; and by removing "or not" and adding, in its place, "or is not".

32. Paragraph (c) of § 2615.14 is amended by designating the sentence after the heading as subparagraph (1) and by revising the definition of *active participant*, redesignated as subparagraph (2), to read as follows:

§ 2615.14 Active participant reduction.

* * * * *

(c) *Determination of the number of active participants.*

* * * * *

(2) For purposes of this section and information submitted pursuant to § 2615.3(c)(1), with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, include as "active" only a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

33. The first sentence of paragraph (b) of § 2615.16 is amended by removing "Forms 5500, 5500–C, 5500–K or 5500–R" and adding, in its place, "Form 5500 or Form 5500–C/R".

§ 2615.18 [Amended]

34. Paragraph (d) of § 2615.18 is amended by removing "effective date of the irrevocable commitment" in the first sentence and adding, in its place, "date on which the obligation to provide benefits passes from the plan to the insurer".

§ 2615.18 [Amended]

35. In paragraph (f) of § 2615.18, the heading is revised to read *"Valuation of assets and benefits"*.

§ 2615.21 [Amended]

36. Paragraph (a) of § 2615.21 is amended by removing in the introductory text "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group" and by adding "(under Title 11, U.S.C.)" before ", or" in paragraph (a)(1).

§ 2615.22 [Amended]

37. In paragraph (a) of § 2615.22, the introductory text is amended by removing "single employer plan," and adding, in its place, "plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group".

§ 2615.22 [Amended]

38. Paragraph (c) of § 2615.22 is amended by removing *"section 4062(d)"* in the heading and adding, in its place, *"section 4069(b)"* and by removing "section 4062(d)" in the text and adding, in its place, "section 4069(b)".

§ 2615.23 [Amended]

39. The title of § 2615.23 is amended by removing "of employer" and adding, in its place, "in contributing sponsor or controlled group".

§ 2615.23 [Amended]

40. Paragraph (a) of § 2615.23 is amended by removing everything in the introductory text after "with respect to" and before "with nonforfeitable benefits" and adding, in its place, "a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group"; by removing "trade or business" each time it appears in paragraph (a)(1)(iii) and paragraph (a)(2) and adding, in its place, "person"; and by removing "the sponsor" in paragraph (a)(2) and adding, in its place, "the contributing sponsor".

§ 2615.23 [Amended]

41. In paragraph (e) of § 2615.23, the heading is revised to read *"Valuation of assets and benefits"*.

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

42. The authority citation for part 2616 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

§ 2616.4 [Amended]

43. In paragraph (c) of § 2616.4 the introductory text is amended by removing the last sentence.

PART 2622—LIABILITY ON TERMINATION OF OR WITHDRAWAL FROM A SINGLE-EMPLOYER PLAN

44. The authority citation for part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, and 1367–1368.

45. The title of part 2622 is revised to read as set forth above.

46. Section 2622.1 is revised to read as follows:

§ 2622.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of the Act, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of the Act. This part also includes related rules regarding payment arrangements under section 4067 of the Act and the PBGC's lien under section 4068 of the Act with respect to liability arising under section 4062, 4063, or 4064.

When a single-employer plan is terminated under section 4041(c) or 4042 of the Act, section 4062 imposes joint and several liability, to the PBGC and the trustee appointed under section 4042(b) or (c), on any person that, on the termination date, is a contributing sponsor or a member of a contributing sponsor's controlled group. Sections 4063 and 4064, in conjunction with section 4062, apply to liability determinations with respect to multiple employer plans. Under section 4063, the PBGC determines the conditional liability for withdrawal of a substantial employer; under section 4064, the PBGC determines the liability upon termination of persons that, within the 5 preceding plan years, contributed to the plan. Both sections provide for prorating or allocating liability among

controlled groups after calculating the amount for the entire plan under section 4062(b), and section 4062(e) makes sections 4063 and 4064 applicable when there are certain cessations of operations at a facility. (See section 4069 of the Act regarding transactions to evade liability and certain corporate reorganizations.)

(b) *Scope.* The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of the Act is issued or proceedings to terminate under section 4042 of the Act are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

47. In § 2622.2, the definition of *Act* is amended by removing "is" and adding, in its place, "means" and by removing everything after "1974," and before the period and adding, in its place "as amended"; the definition of *PBGC* is amended by removing "is" and adding, in its place "means"; the definitions of *date of plan termination, employer, plan asset insufficiency, single employer plan,* and *Title IV* are removed; and the definitions of *net worth* and *net worth record date* are revised and definitions of *Code, collective net worth of persons subject to liability in connection with a plan termination, contributing sponsor, controlled group, multiple employer plan, notice of intent to terminate, proposed termination date, section 4062(b) liability, single-employer plan,* and *termination date* and added, in alphabetical order, to read as follows:

§ 2622.2 Definitions.

* * * * *

Code means the Internal Revenue Code of 1986, as amended.

Collective net worth of persons subject to liability in connection with a plan termination means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of the Act and § 2622.4 of this part.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under Part 2612 of this subchapter.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

Net worth means the fair market value of a person liable under section 4062 of the Act, as determined in accordance with section 4062(d)(1) of the Act and § 2622.4 of this part.

Net worth record date means the day, chosen by the PBGC in accordance with section 4062(d)(1) of the Act and § 2622.5 of this part, as of which the PBGC makes net worth determinations.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 of this subchapter.

* * * * *

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice, in accordance with section 4041 of the Act and part 2616 of this subchapter.

Section 4062(b) liability means, with respect to a single-employer plan terminated under section 4041(c) or section 4042 of the Act, the joint and several liability to the PBGC which is incurred by any person that, on the termination date, is a contributing sponsor of the plan or a member of a contributing sponsor's controlled group; the amount of this liability is determined in accordance with section 4062(b)(1) of the Act and § 2622.3(a) of this part.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Termination date means the date established pursuant to section 4048(a) of the Act.

48. Section 2622.3 is revised to read as follows:

§ 2622.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability.*

(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of the Act) to all participants and beneficiaries under the plan, together with interest calculated from the termination date in accordance with § 2622.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits.* In any distress termination proceeding under section 4041(c) of the Act and part 2616 of this subchapter in which (as described in section 4041(c)(3)(C)(ii) of the Act), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits (as defined in § 2616.2 of this subchapter), the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 2622.8(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination, and the PBGC may make alternative arrangements, as provided in § 2622.8(b).

49. The title and paragraph (a) of § 2622.4 are revised to read as follows:

§ 2622.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 2622.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 2622.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

* * * * *

§ 2622.4 [Amended]

50. Paragraphs (b) through (d) of § 2622.4 are amended by removing "an employer" each time it appears and adding, in its place, "a person"; by removing "An employer's" in the introductory text of paragraph (c) and the first sentence of paragraph (d) and adding, in its place, "A person's"; by removing "the employer's" each time it appears and adding, in its place, "the person's"; by removing "the employer" each time it appears and adding, in its place, "the person"; by removing "net record" in paragraph (c)(3) and adding, in its place, "net worth record"; by removing "The employer's" in paragraph (c)(5) and adding, in its place, "The person's"; by removing "proceeding under chapter 11 of the Bankruptcy Code of 1978 (or under chapter XI of of the prior Bankruptcy Act)" in paragraph (c)(8) and adding, in its place, "case under title 11, United States Code, or any similar law of a state or political subdivision thereof,"; and by removing "employer liability" in the first sentence of paragraph (d) and adding, in its place, "liability".

§ 2622.5 [Amended]

51. Paragraph (a) of § 2622.5 is amended by removing "date of plan termination established pursuant to section 4048 of the Act" and adding, in its place, "plan's termination date".

§ 2622.5 [Amended]

52. Paragraph (b) of § 2622.5 is amended by removing everything in the first sentence after "establish" and before the period and adding, in its place, "as the net worth record date an earlier date during the 120-day period ending with the termination date".

§ 2622.5 [Amended]

53. Paragraph (c) of § 2622.5 is amended by removing "to the employer" in the heading; by removing "the employer" in the first sentence and adding, in its place, "liable person(s)"; and by removing "more information pursuant to § 2622.6(b)" in the second sentence and adding, in its place, "additional information, as provided in § 2622.6(a)(3)".

54. In § 2622.6, paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (b)(1) through (b)(7), in that order; the introductory text of paragraph (a) is designated as paragraphs (a)(1) through (a)(4) and revised and the introductory text of paragraph (b) is revised; redesignated paragraphs (b)(1) through (b)(7) are amended by removing "The employer's" and adding, in its place, "An" and by removing "its" and adding, in its place, "the person's" in paragraph (b)(1); by removing "employer's" and adding, in its place, "person's" in paragraphs (b)(2), (b)(4), (b)(5), and (b)(6); by removing "employer" both times it appears and adding, in its place, "the person's" in paragraph (b)(3); and by removing "proceeding under chapter 11 of the Bankruptcy Code of 1978 (or under chapter XI of the prior Bankruptcy Act)" and adding, in its place, "case under title 11, United States Code, or any similar law of a state or political subdivision thereof," and by removing "employer" and adding, in its place, "person" in paragraph (b)(7); and paragraph (c) is revised; and as revised, paragraph (a), the introductory text of paragraph (b), and paragraph (c) read as follows:

§ 2622.6 Net worth notification and information.

(a) *General.*

(1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of the Act, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of the Act, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of the contributing sponsor's controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

* * * * *

(c) *Incomplete submissions.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

55. In § 2622.7, paragraph (d) is removed and the title and paragraphs (a) and (b) are revised to read as follows:

§ 2622.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 2622.8, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the

overpayment or 10 days prior to the termination date until the date of the refund and is compounded daily.

* * * * *

§ 2622.7 [Amended]

56. In paragraph (c) of § 2622.7, the first sentence is amended by removing "employer liability and refunds of employer liability" and adding, in its place, "liability under this part and refunds thereof" and by removing "Internal Revenue Code of 1954, as amended," and adding, in its place, "Code".

57. The title and paragraphs (a), (b), (c), and (d) of § 2622.8 are revised to read as follows:

§ 2622.8 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of the Act and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC may, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of the Act at any time by filing a written request. The request must include the information specified in § 2622.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to "the net worth record date" in § 2622.6(b) shall be replaced by "the most recent annual anniversary of the net worth record date"; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of the Act) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 2622.7(a).

* * * * *

§ 2622.8 [Amended]

58. Paragraph (e) of § 2622.8 is amended by removing "an employer" and adding, in its place, "the liable person(s)".

§ 2622.9 [Amended]

59. The title of § 2622.9 is amended by removing "lien for employer liability" and adding, in its place, "demand for liability; lien".

§ 2622.9 [Amended]

60. In paragraph (a) of § 2622.9, the first sentence is amended by removing "an employer's liability" and adding, in its place, "the liability" and by removing "the employer" and adding, in its place, "liable person(s)"; the second sentence is amended by adding "and will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination" at the end before the period; and the last sentence is amended by removing "employer's".

§ 2622.9 [Amended]

61. Paragraph (b) of § 2622.9 is amended by removing "If the employer fails to pay its" and adding, in its place, "Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the" and by adding as concluding text of paragraph (b): "The demand letter will indicate that, as provided in § 2622.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination."

§ 2622.9 [Amended]

62. In paragraph (c) of § 2622.9, the first sentence is amended by removing "an employer's" after "payment of" and by removing "for an employer's liability" and adding, in its place, "for the liability"; and the last sentence is amended by removing "to appeal of the assessment of liability" and adding, in its place, "to an appeal".

§ 2622.9 [Amended]

63. Paragraph (d) of § 2622.9 is amended by removing "If the employer" and adding, in its place, "If any person liable to the PBGC under section 4062, 4063, or 4064 of the Act"; by removing "its liability" and adding, in its place, "such liability"; and by removing everything after "arising as of the" and before the period and adding, in its place, "plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of the Act".

§ 2622.10 [Amended]

64. Paragraph (a) of § 2622.10 is amended by adding "(including

information)" after "document" in the introductory text.

§ 2622.10 [Amended]

65. In paragraph (b) of § 2622.10, the first sentence is amended by removing "employer"; by removing ", and shall be sent to the Division of the Treasurer, Office of Financial Operations" and adding, in its place, ". Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 2622.9 or, if not so specified, to the address provided, upon request, by the Investment Management Division (Code 33500)"; and by adding "(202–778–8802)" at the end before the period; and the second sentence is amended by adding "(including information)" after "document" and by removing "Office of Program Operations" and adding, in its place, "Insurance Operations Department".

PART 2623—BENEFIT REDUCTIONS TERMINATING PLANS; RECOUPMENT AND REIMBURSEMENT

66. The authority citation for part 2623 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1322, 1322b, 1341(c)(3)(D), and 1344.

67. The title of part 2623 is revised to read as set forth above.

68. Section 2623.1 is revised to read as follows:

§ 2623.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe procedures that minimize the overpayment of benefits by plan administrators when terminating single-employer plans are not expected to be sufficient for guaranteed benefits and procedures for the recoupment of benefit overpayments from participants and beneficiaries entitled to annuities and the reimbursement of benefit underpayments to participants and beneficiaries in PBGC-trusteed plans.

(b) *Scope.* Subpart B of this part sets forth the rules for reducing benefit payments after initiating a distress termination; subpart C of this part sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of the Act and provides for reimbursement of benefit underpayments.

69. Section 2623.2 is amended by removing the definitions of *insufficient plan, Title IV Benefit, section 4041(a) date of termination,* and *section 4048 date of termination* and by adding, in alphabetical order, definitions of *distress termination, guaranteed benefit, notice of intent to terminate, PBGC-trusteed plan, proposed termination date, single-employer plan, sufficient for guaranteed benefits, termination date,* and *title IV benefit* to read as follows:

§ 2622.2 Definitions.

* * * * *

Distress termination means the voluntary termination, in accordance with section 4041(c) of the Act and part 2616 of this subchapter, of a single-employer plan.

Guaranteed benefit means a benefit that is guaranteed by the PBGC under section 4022 (a) and (b) of the Act and parts 2613 and 2621 of this chapter.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 or § 2617.22 of this subchapter.

* * * * *

PBGC-trusteed plan means a terminated plan for which the PBGC is appointed trustee under section 4042(b) of the Act.

Proposed termination date means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice or the standard termination notice, in accordance with section 4041 of the Act and part 2616 or part 2617 of this subchapter.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

* * * * *

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits (within the meaning of section 4001(a)(17) of the Act).

Termination date means the date established pursuant to section 4048(a) of the Act.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of the Act and part 2618 of this subchapter.

70. The title of § 2623.5 is amended by removing "benefits payable" and adding, in its place, "benefit payments".

71. Paragraph (a) of § 2623.5 is revised to read as follows:

§ 2623.5 Limitations on benefit payments by plan administrator.

(a) *General.* When, during the pendency of a distress termination proceeding, § 2616.4 of this subchapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

* * * * *

§ 2623.5 [Amended]

72. Paragraph (b) of § 2623.5 is amended by removing "beginning on the section 4041(a) date of termination" in the first sentence and by adding "or her" after "his" in the second sentence.

§ 2623.5 [Amended]

73. Paragraph (c) of § 2623.5 is amended by removing "beginning on the section 4041(a) date of termination"; by removing "chapter" and adding, in its place "subchapter"; and by adding ", for the year of the proposed termination date" at the end before the period.

§ 2623.5 [Amended]

74. Paragraph (d) of § 2623.5 is amended by adding "*payments*" after "*benefit*" in the heading and by removing "Beginning on the thirtieth day after the section 4041(a) date of termination, or on the section 4041(a) date of termination if the Notice of Intent to Terminate proposes a date of termination that is more than thirty days after the Notice of Intent to Terminate was filed, a" and adding, in its place, "A".

§ 2623.5 [Amended]

75. Paragraph (e) of § 2623.5 is removed.

§ 2623.5 [Amended]

76. Paragraph (f) of § 2623.5 is amended by removing "*deadlines and*" in the heading; by removing paragraph (f)(1); by removing the colon after "may" in the introductory text; by removing the designation of paragraph (f)(2) and the word "Authorize" and adding, in its place, "authorize"; and, as so amended, paragraph (f) is redesignated as paragraph (e).

77. Paragraph (g) of § 2623.5 is redesignated as paragraph (f) and the examples following the introductory text are revised to read as follows:

§ 2623.5 Limitations on benefit payments by plan administrator.

* * * * *

(f) * * *

Example 1

Facts. On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of $2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (*i.e.*, $1,250

per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of part 2621 of this subchapter. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is $2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 2621.4(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 2621.2. The required benefit reduction for this benefit form under § 2621.4(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 2621.4(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is $1,926.51 ($2,352.27×0.90×0.91) per month. Therefore, the plan administrator must reduce the participant's benefit payment from $2,500 to $1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse $963.26 (0.50×$1,926.51) per month.

Example 2

Facts. The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of $400 per month plus a temporary supplement of $400 per month payable until age 62. The participant's accrued benefit under the plan is $450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 2621.4(c) of this subchapter is $1,693.63 ($2,352.27×0.72) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 2621.4(d) for benefit form.

Benefit reductions. The plan benefit of $800 per month payable until age 62 exceeds the participant's accrued benefit of $450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to that level. Since the resulting levelized benefit of $404.10 ((0.082×50)+$400) per month, determined under § 2621.4(f), is less than the adjusted maximum guaranteeable benefit of $1,693.63 per month, no further reduction in the benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's benefit under paragraph (d).

Example 3

Facts. A retired participant is receiving a reduced early retirement benefit of $600 per month plus a temporary supplement of $1,200 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $1,200 per month. The maximum guaranteeable benefit adjusted for age is $1,152.61 ($2,352.27×0.49) per month. A form adjustment is not required.

Benefit reductions. The plan benefit of $1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of $1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to $600 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of $600 per month and a temporary annuity supplement of $600 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of $600 per month is converted to a level-life annuity equivalent in accordance with § 2621.4(f) of this subchapter. The level-life annuity equivalent is $232.20 ($600×0.387). This, added to the life annuity of $600 per month, equals $832.20. Since the maximum guaranteeable benefit of $1,152.61 per month exceeds $832.20 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit under paragraph (d). Assume that the estimated benefit under paragraph (d) is $1,500 per month until age 62 and $600 per month thereafter. The plan administrator would pay the participant $1,500 per month, reduced to $600 per month at age 62, subject to the final benefit determination made under title IV.

Example 4

Facts. A retired participant is receiving a reduced early retirement benefit of $2,250 per month plus a temporary supplement of $1,200 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is $1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

Benefit reductions. The plan benefit of $3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is $3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed $3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 2621.4(f) adjustment factor, is $2,540.25 (($750×0.387)+$2,250) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of $1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 40.84 percent ($1,037.35/$2,540.25). Thus, the plan administrator must reduce the participant's level-life benefit of $2,250 per month to $918.90 ($2,250×0.4084) and must further reduce the reduced temporary benefit of $750 per month to $306.30 ($750×0.4084). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is $1,225.20 ($918.90+$306.30) per month to age 62 and $918.90 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is $1,050 per month to age 62 and $750 per month thereafter. The plan administrator would reduce the participant's benefit from $1,225.20 per month to $1,050 per month and pay this amount until age 62, at which time the benefit payment would be reduced to $750 per month, subject to the final benefit determination made under title IV.

§ 2623.6 [Amended]

78. Paragraph (a) of § 2623.6 is amended by removing the last sentence.

§ 2623.6 [Amended]

79. Paragraph (b) of § 2623.6 is amended by removing "section 4041(a) date of termination" each time it appears (in the heading or the text) and adding, in its place, "proposed termination date"; by removing "was" and adding, in its place, "is" in paragraph (b)(1); and by adding "or her" after "his" in paragraph (b)(2).

§ 2623.6 [Amended]

80. Paragraph (c) of § 2623.6 is amended by adding "or her" after "his" both times it appears in paragraph (c)(1); by adding "or she" after "he" each time it appears; and by removing "section 4041(a) date of termination" each time it appears in paragraph (c)(2) and

paragraph (c)(3) and adding, in its place, "proposed termination date".

§ 2623.6 [Amended]

81. Paragraph (d) of § 2623.6 is amended by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date" and by adding "or she" after "he" and "or "her" after "his" in paragraph (d)(2)(ii).

82. The examples in paragraph (e) of § 2623.6 are revised to read as follows:

§ 2623.6 Estimated guaranteed benefit.

* * * * *

(e) * * *

Example 1

Facts. A participant which is not a substantial owner retired on December 31, 1991, at age 60 and began receiving a benefit of $600 per month. On January 1, 1989, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of 1/15th for each year by which his or her actual retirement age preceded age 65. On January 1, 1992, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 1992. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 1992.

Estimated guaranteed benefit. No reduction is required under § 2623.5(b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

The amendment as of January 1, 1989, resulted in a "new benefit" because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by 5/15, which is more than a 20 percent increase.

The amendment of January 1, 1992, which increased the participant's benefit to $750 per month, is a "benefit improvement" because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether such an increase is a benefit improvement.)

The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I (because the last new benefit had been in effect for 3 full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the 1-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 (0.55 × $750) per month.

Example 2

Facts. A participant who is not a substantial owner terminated employment on December 31, 1990. On January 1, 1992, she reached age 65 and began receiving a benefit of $250 per month. She had completed 3 years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 1988. Under the schedule in effect before the amendment, a participant with 5 years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 1992.

Estimated guaranteed benefit. No reduction is required under § 2623.5 (b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for 4 full years before the proposed termination date, the second row of Table I is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 (0.80 × $250) per month.

Example 3

Facts. A participant who is a substantial owner retired prior to the proposed termination date after 5½ years of active participation in the plan. The benefit under the terms of the plan when he first began active participation was $800 per month. On the proposed termination date of April 30, 1992, he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 2623.5 (b) or (c).

Estimated guaranteed benefit. Paragraph (d)(2) of this section is used to compute the amount of the estimated guaranteed benefit of substantial owners with 5 or more years of active participation prior to the proposed termination date. Consequently, the amount of this participant's estimated guaranteed benefit is the lesser of—

(i) the amount calculated as if he had been an active participant in the plan for fewer than 5 full years on the proposed termination date, or $333.33 ($2,000 × 5/30) per month.

(ii) the amount to which he would have been entitled as of the proposed termination date under the terms of the plan when he first began participation, as limited by § 2623.5(b) and (c), multiplied by 2 times the number of years of active participation and divided by 30, or $266.67 ($800 × 2 × 5/30) per month.

Therefore, the amount of the participant's estimated guaranteed benefit is $266.67 per month.

§ 2623.7 [Amended]

83. The title of § 2623.7 is amended by removing "Title IV Benefit" and adding, in its place, "title IV benefit".

§ 2623.7 [Amended]

84. Paragraph (a) of § 2623.7 is amended by removing "Benefit" each time it appears and adding, in its place, "benefit" and by removing the last sentence.

§ 2623.7 [Amended]

85. Paragraph (b) of § 2623.7 is amended by removing "Benefits" both times it appears in the introductory text and adding, in its place, "benefits" and by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date".

§ 2623.7 [Amended]

86. Paragraph (c) of § 2623.7 is amended by removing "*Benefit*" in the heading and adding, in its place, "*benefit*"; by removing "Benefit" in the first sentence of the introductory text and adding, in its place, "benefit"; and by removing "section 4041(a) date of termination" each time it appears and adding, in its place, "proposed termination date".

§ 2623.7 [Amended]

87. Paragraph (d) of § 2623.7 is amended by removing "*Benefit*" in the heading and adding, in its place, "*benefit*" and by adding "or she" after "he" in paragraph (d)(1).

88. The examples in paragraph (e) of § 2623.7 are revised to read as follows:

§ 2623.7 Estimated Title IV benefits.

* * * * *

(e) * * *

Example 1

Facts. A participant who is not a substantial owner was eligible to retire 3½ years before the proposed termination date. The participant retired 2 years before the proposed termination date with 20 years of service. Her final 5 years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 2623..5(b) or (c).

On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final 5 years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1½ percent. The amendments improving benefits were put into effect 3½ years prior to the proposed termination date. There were no other amendments during the 5-year period.

The participant's estimated guaranteed benefit computed under § 2623.6(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 2623.6(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the title IV benefit.

Estimated title IV benefit. For a participant who is not a substantial owner, the amount

of the estimated title IV benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of (i) the normal retirement benefit under the provisions of the plan in effect 5 years before the proposed termination date and (ii) the normal retirement benefit under the plan provisions in effect on the proposed termination date.

Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan 5 years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated title IV benefit is $1,125 (0.015/0.020 × $1,500) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 2623.5(d), the benefit payable to the participant is $1,350 per month.

Example 2

Facts. A participant who is a substantial owner retires at the plan's normal retirement age, having completed 5 years of active participation in the plan, on October 31, 1992, which is the proposed termination date. Under provisions of the plan in effect 5 years prior to the proposed termination date, the participant is entitled to a single life annuity of $500 per month. Under the most recent plan amendments, which were put into effect 1½ years prior to the proposed termination date, the participant is entitled to a single life annuity of $1,000 per month. The participant's estimated guaranteed benefit computed under § 2623.6(d)(2) is $166.67 per month.

It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

Estimated title IV benefit. Paragraph (d) of this section provides that the amount of the estimated Title IV benefit payable with respect to a participant who is a substantial owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

Under paragraph (c), the participant's estimated priority category 3 benefit is $500 ($1,000 × $500/$1000) per month.

Under paragraph (d), the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 2623.6(c) (*i.e.*, as if the participant were not a substantial owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i). The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 2623.6(c) is $1,000 per month times 0.90 (the factor from column (b) of Table I in § 2623.6(c)(2)), or $900 per month. Multiplying $900 by the category 4 funding ratio of ⅔ (($2 million – $1.5 million)/$0.75 million) produces an estimated category 4 benefit of $600 per month.

Because the estimated category 4 benefit so computed is greater than the estimated category 3 benefit so computed, the estimated category 4 benefit is the estimated title IV benefit. Because the estimated category 4 benefit so computed is greater than the estimated guaranteed benefit of $166.67 per month, in accordance with § 2623.5(d), the benefit payable to the participant is the estimated category 4 benefit of $600 per month.

§ 2623.8 [Removed]

89. Section 2623.8 is removed.

§ 2623.11 [Amended]

90. Paragraph (a) of § 2623.11 is amended by removing "terminated insufficient plan" in the first sentence and adding, in its place, "PBGC-trusteed plan"; by removing "he or his" the first time it appears in the first sentence and adding, in its place, "the participant or his or her"; by removing "he or his" the second time it appears in the first sentence and adding, in its place, "the participant or beneficiary"; by removing "recoupment under" and adding, in its place, "recouping in accordance with the rules in" in the second sentence; and by removing "section 4048 date of termination" and adding, in its place, "termination date" in the last sentence.

§ 2623.11 [Amended]

91. Paragraph (b) of § 2623.11 is amended by removing "terminated insufficient plan" and adding, in its place, "PBGC-trusteed plan" and by removing "he or his" and adding, in its place, "the participant or his or her".

§ 2623.11 [Amended]

92. Paragraph (c) of § 2623.11 is amended by removing everything after "on or after the latest of" and before "the date on which" and adding, in its place, "the proposed termination date, the termination date, or, if no notice of intent to terminate was issued,".

§ 2623.12 [Amended]

93. Paragraph (a) of § 2623.12 is amended by removing "section 4048 date of termination" in paragraph (a)(1) and adding, in its place, "termination date" and by adding "or her" after "him" in paragraph (a)(3).

Issued in Washington, DC this 7th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30058 Filed 12–11–92; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Montana permanent regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to change the State's definition of "prospecting" to more closely conform to the Federal definition of "coal exploration" and to include in the definition certain data gathering activities.

This document sets forth the times and locations that the Montana program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received 4 p.m., m.s.t. January 13, 1993. If requested, a public hearing on the proposed amendment will be held on January 8, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on December 29, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below

during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director; Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918. Telephone: (307) 261–5776.

Gary Amestoy, Administrator; Reclamation Division, Montana Department of State Lands; Capitol Station; 1625 Eleventh Ave.; Helena, MT 59620. Telephone: (406) 444–2074.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning the Montana program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Discussion of the Proposed Amendment

By letter dated October 19, 1992 (Administrative Record No. MT–9–01), Montana submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment in response to a 30 CFR part 732 notification, dated March 29, 1990. This notification informed Montana that its definition of "[p]rospecting," at Montana Code Annotated (MCA) 82–4–203(26), when applied to lands designated unsuitable for mining, was less effective than the Federal definition of "coal exploration" at 30 CFR 701.5.

The proposed program amendment consists of a legislative revision to the statutory definition. The revision adds to the definition new language specifying that the collection of surface or subsurface geologic, chemical, environmental, and other data, when conducted on areas designated as unsuitable for mining, is included in the definition of "[p]rospecting." As revised, the statutory definition would include the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit and, on areas designated unsuitable for coal mining pursuant to 82–4–227 and 82–4–228, the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area and the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than OSM's Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. December 29, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of E.O. 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of

section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92–29695 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 114; FRL 4544–4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of a new part 236, "Synthetic Organic Chemical Manufacturing Facility Component Leaks" and an amended part 200, "General Provisions" of title 6 of the New York Code of Rules and Regulations. These revisions correct deficiencies in New York's SIP, as required by the Clean Air Act (CAA) as amended in 1990. New York was required to make these corrections pursuant to a SIP call issued in 1988 and pursuant to section 182(a)(2)(A) of the CAA. EPA has evaluated these regulations and proposes approval of part 200 and part 236 under section 110(k)(3) as meeting the requirements of Section 110(a) and part D of the CAA.

DATES: Comments must be received on or before January 13, 1993.

ADDRESSES: All comments should be addressed to: Constantine Sidamon-Eristoff, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034A, New York, New York 10278.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the 1970 Clean Air Act, the New York City Metropolitan area (NYCMA) which is comprised of New York City, Nassau, Suffolk, Westchester and Rockland counties was designated nonattainment for ozone and required to submit a SIP which would attain the National Ambient Air Quality Standard (NAAQS) for ozone, by December 31, 1982. New York requested the EPA granted an extension of the attainment date to December 31, 1987.

On May 26, 1988, EPA informed the Governor of New York that the SIP for the NYCMA was substantially inadequate to attain the NAAQS for ozone and carbon monoxide. A follow-up letter of June 14, 1988, to the New York State Department of Environmental Conservation (NYSDEC) contained the basis for this finding of SIP inadequacy and identified both the specific deficiencies in New York's existing regulations and regulations that New York had committed to develop but did not.

On November 15, 1990 amendments to the Clean Air Act were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (Amendments). In amended section 182(a)(2)(A), Congress requires that ozone nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone. Areas that were designated nonattainment of the NAAQS before enactment of the Amendments and that were classified as marginal or worse as of enactment, are required to correct any deficiencies to its RACT rules. Section 182(a)(2)(A) establishes a May 15, 1991 deadline for correcting RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The NYCMA nonattainment area is classified as severe.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On December 19, 1990 EPA sent a letter to the Governor of New York identifying a number of activities that the CAA required in the near term. The specific problems were identified in a January 30, 1991 letter to the NYSDEC.

The most significant problems EPA identified with the SIP were the failure to develop a control measure regulating the detection and repair of component leaks at synthetic organic chemical manufacturing (SOCMI) facilities, an inadequate definition of volatile organic compound (VOC) and inadequate emission limitations for certain surface coatings. This SIP revision addresses the missing control measure for SOCMI facilities and the inadequate definition of VOC.

State Submittals

On January 8, 1992, NYSDEC submitted to EPA a request to revise its SIP. The revisions consisted of a new part 236, "Synthetic Organic Chemical Manufacturing Facility Component Leaks" and an amended part 200,

[1] Among other things, the pre-amendment guidance consists of: The Post–87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs .

[2] NYCMA retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments (56 FR 56694).

"General Provisions" of title 6 of the New York Code of Rules and Regulations. These revisions address only the deficiencies which EPA identified with these regulations. New York had adopted both of these regulations on December 31, 1991. A summary of EPA's review and findings concerning these regulations follows.

Part 236

Part 236 regulates the monitoring and repair of leaks at SOCMI facilities. It requires SOCMI facilities to monitor components for leaks every three months. With NYSDEC approval, components that are unsafe to monitor may be monitored on an annual basis. Once a leak has been detected it must be repaired within fifteen days, unless repair would require shutting down the process unit. It this case, repair may be delayed until the next process unit shutdown.

Test methods for detecting leaks are specified. SOCMI facility operators are also required to maintain records of the monitoring of all components and the repair of all identified leaks. In addition, quarterly reports must be submitted to the NYSDEC.

Exemptions are allowed for components not in gas/vapor or light liquid service, components in vacuum service, components in process units which only produce the regulated compounds as byproducts and components in service fewer than 300 hours a year. These exemptions are consistent with EPA policy and guidance.

Section 236.6(e)(3) allows NYSDEC to accept the use of alternative methods of compliance if a source can demonstrate that the methods utilized constitute RACT. NYSDEC has agreed that for purposes of being federally enforceable it will submit any alternate requirements to EPA for approval. EPA will not recognize any alternate requirement until it is approved by EPA. Approval of a variance request will involve a case-by-case review that will be based on the effect of the proposed variance on air quality and on the ability of a facility to comply with the existing regulation.

Because EPA believes that part 236 meets the RACT requirements for SOCMI sources, EPA is proposing to approve part 236.

Part 200

Revised part 200 contains several new definitions and revisions of several other definitions. In addition, it lists the federal new source performance standards (NSPS), and the national emission standards for hazardous air pollutants (NESHAPS) that EPA has delegated NYSDEC the authority to implement.

The definitions that have been added to part 200 are: Municipal solid waste, municipal solid waste incineration facility, nonreactive volatiles, nonvolatile material and PM10.

The definitions that have been revised are: Air cleaning installation, emission, emission rate potential, facility, incinerator, maximum operating heat input, modification, process, refuse, standard conditions and volatile organic compound (VOC).

The definition of maximum operating heat input in § 200.1(gg) was changed to reflect New York's practice of specifying the maximum operating heat input as the permissible operating limit on permits to construct or certificates to operate. This practice was established by an April 27, 1983 letter from the Air Director of NYSDEC and will now be incorporated into the SIP.

The definition of VOC in § 200.1(mmm) was changed to reflect EPA's definition of VOC (40 CFR 51.100(s)). Instead of using vapor pressure limits as a means of defining VOC, it now is defined as an organic compound which participates in atmospheric photochemical reactions. New York's revised definition of VOC allows sources to measure VOC's either by EPA approved test methods in appendix A of title 40 Code of Federal Regulations part 60 or by an alternative method acceptable to the NYSDEC on the basis of a demonstration that it is as accurate as the appendix A method. The ability to use alternate test methods is needed for the rare instances when standard test methods cannot be used. NYSDEC has agreed that for purposes of being federally enforceable it will submit these alternate test methods to EPA for approval. EPA will not recognize any alternate test method until it is approved by EPA. Approval of an alternative test method will be based on a case-by-case review that involves the comparison of the proposed test method and the EPA method and on the ability of a facility to comply with the existing regulation.

The definition of nonvolatile material in § 200.1(oo) also allows for the use of alternative test methods. For the reasons explained above, NYSDEC has agreed that for purposes of being federally enforceable it will submit these alternate test methods to EPA for approval.

Section 200.10 lists the NSPS and NESHAPS that EPA has delegated to NYSDEC. This section is for informational purposes only and is not part of the SIP. The official list of NSPS's delegated to NYSDEC appear in 40 CFR part 60.4(ff)(1) and the NESHAPS are officially delegated to NYSDEC through **Federal Register** notices. Since this section is not part of the SIP, EPA is not granting either an approval or a disapproval of this section. EPA notes here that this section lists a number of NSPS and NESHAPS that have not been delegated to NYSDEC. At this time, EPA has not delegated to NYSDEC the following NSPS that are listed in table 1 of part 200.10: 40 CFR 60 subpart Db Industrial-Commercial-Institutional Steam Generating Units, 40 CFR 60 subpart Kb, Volatile Organic Liquid Storage Vessels Constructed after July 23, 1984; 40 CFR 60 subpart Na, Secondary Emissions from Basic Oxygen Processes Steelmaking Facilities; 40 CFR 60 subpart BBB, Rubber Tire Manufacturing and 40 CFR part 60 subpart TTT, Surface Coating of Plastic Parts for Business Machines. EPA has also not delegated the following NESHAPS, listed in table 2 of part 200.10: 40 CFR part 61 subpart O, Arsenic from Primary Copper Smelters and 40 CFR part 61 subpart P, Arsenic from Metallic Arsenic Production. EPA retains primary authority to implement the above standards. Therefore, sources subject to the above standards must make any required submissions to the EPA Region II office. Specific requirements for the individual NSPS and NESHAPS can also be found in current volumes of the CFR. All of the other NSPS and NESHAPS listed in tables 1 and 2, respectively, of part 200.10 have been delegated to NYSDEC.

EPA is proposing to approve part 200.

Conclusion

EPA is proposing approval of parts 200 and 236 because they are consistent with EPA policy and guidance and therefore EPA believes they meet the RACT requirements of section 182(a)(2)(A).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 29, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92–30292 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 417 and 434

Office of Inspector General

42 CFR Part 1003

[OCC–024–P]

RIN 0938–AF74

Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS. Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing Federally-qualified health maintenance organizations (HMOs) and competitive medical plans (CMPs) contracting with the Medicare program, and certain HMOs and health insuring organizations (HIOs) contracting with the Medicaid program, by implementing requirements in sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 concerning physician incentive plans.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 12, 1993.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services. Attention: OCC–024–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–024–P. Written comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the section on "Collection of Information Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Attention: Allison Herron Edyt, Office of Management and Budget, New Executive Office Building (Room 3001), Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT:

Medicare: Parashar Patel, (202) 619–3166.

Medicaid: Ann Page, (410) 966–5364.

Office of Inspector General: Zeno St. Cyr, II, (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Prepaid health care organizations, such as health maintenance organizations (HMOs), competitive medical plans (CMPs), and health insuring organizations (HIOs), are entities that provide enrollees with comprehensive, coordinated health care in a cost-efficient manner. The goal of prepaid health care delivery is to control health care costs through preventive care and care management and provide enrollees with affordable, coordinated, quality health care services. Titles XVIII and XIX of the Social Security Act (the Act) authorize contracts with prepaid health care organizations for the provision of covered health services to Medicare beneficiaries and Medicaid recipients. Such organizations may contract under either a risk-based or cost-reimbursed contract.

B. Medicare

Section 1876 of the Act authorizes the Secretary to enter into contracts with eligible organizations (HMOs that have been Federally qualified under section 1310(d) of the Public Health Service Act, and CMPs that meet the requirements of section 1876(b)(2) of the Act) to provide Medicare-covered services to beneficiaries, and specifies the requirements to be met by the organizations. Section 1876 of the Act also provides for Medicare payment at predetermined rates to eligible organizations that have entered into risk-based contracts under Medicare, or for payment of reasonable costs to eligible organizations that have entered into cost-reimbursed contracts. Implementing Federal regulations for the organization and operation of Medicare prepaid health care organizations, contract requirements, and conditions for payment are located at 42 CFR 417.400–417.694.

Risk-based organizations are paid a prospectively-determined per capita monthly payment for each Medicare beneficiary enrolled in the organization. This capitated payment is the projected actuarial equivalence of 95 percent of what Medicare would have paid for the Medicare beneficiaries if they had received services from a fee-for-service Medicare provider or supplier. Organizations paid on a risk basis are liable for any difference between the Medicare prepaid amounts and the actual costs they incur for providing services, and are therefore "at risk."

Cost-reimbursed organizations are paid monthly interim per capita payments that are based on a budget. Later, a retrospective cost settlement occurs to determine the reasonable costs actually incurred by the organization for the covered services it furnished to its Medicare enrollees.

C. Medicaid

Section 1903(m) of the Act specifies requirements that must be met for States to receive Federal financial participation (FFP) for their contracts with organizations (HMOs or HIOs) to provide specific arrays of services ("comprehensive services") on a risk basis, either directly or through arrangements. Federal implementing regulations for these contract requirements and conditions for payment are located at 42 CFR part 434.

States determine the per capita monthly rates that are to be paid to risk-based organizations. FFP is available for these payments at the matching rate applicable in the State as long as we determine that: (1) the HMO or HIO rates are actuarially sound; (2) the rates do not exceed the cost of providing the same scope of services on a fee-for-service basis, to an actuarially equivalent non-enrolled population group; and (3) the contract meets the additional requirements at 42 CFR part 434 and 45 CFR part 74.

II. Legislative History

Section 9313(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99–509, enacted statutory language prohibiting hospitals and prepaid health care organizations with Medicare or Medicaid risk contracts from knowingly making incentive payments to a physician as an inducement to reduce or limit services to Medicare beneficiaries or Medicaid recipients. Under OBRA '86, parties who knowingly made or accepted such payments would have been subject to specified civil money penalties. OBRA '86 also required that the Secretary report on incentive arrangements in HMOs and CMPs.

The original implementation date for the OBRA '86 physician incentive provisions applicable to prepaid health care organizations was April 1, 1989. This date was extended by section 4016 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100–203, to April 1, 1990. Section 6207 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Pub. L. 101–239, further extended the date to April 1, 1991. Sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101–508, repealed the prohibition of all physician incentive plans in prepaid health care organizations and enacted requirements for regulating these plans.

Specifically, section 4204(a)(1) of OBRA '90 amended section 1876(i) of the Act to list these requirements, which are that prepaid health care organizations must:

- Not operate a physician incentive plan that directly or indirectly makes specific payments to a physician or physician group as an inducement to limit or reduce medically necessary services to a specific individual enrolled with the organization;
- Disclose to HCFA their physician incentive plan arrangements in such detail as to allow HCFA to determine compliance of the arrangements with Departmental regulations; and
- In instances where a physician incentive plan places a physician or physician group at "substantial financial risk" (as defined by the Secretary) for services not provided directly, provide the physicians or physician groups with adequate and appropriate stop-loss protection (under standards determined by the Secretary), and conduct surveys of currently and previously enrolled members to assess the degree of access to services and the satisfaction with the quality of services.

Each Medicare risk and cost contract must provide that the organization may not operate a physician incentive plan that does not meet the requirements stated above. Section 4731 of OBRA '90 enacted similar provisions for the Medicaid program by amending sections 1903(m)(2)(A) and 1903(m)(5)(A) of the Act.

In addition, sections 4204(a)(2) and 4731(b)(2) of OBRA '90 added violations of the above requirements to the list of violations in sections 1876(i)(6) and 1903(m)(5) of the Act that could subject an HMO, CMP, or HIO to intermediate sanctions and civil money penalties. (On July 22, 1991, we published a Notice of Proposed Rulemaking (NPRM) that described these intermediate sanctions and civil money penalties (see 56 FR 33403). For clarity and consistency, we are republishing certain sections of the regulations that were proposed in the July 22 NPRM because we are proposing to revise those regulations to incorporate the penalty provisions of this proposed rule. See Section V. of this preamble, Revisions to the Regulations, for the specific sections that are being republished).

III. Discussion of Physician Incentive Plans

Effective utilization control that identifies both under- and over-utilization is essential for the efficient operation of prepaid health care organizations. A prepaid health care organization needs to minimize over-utilization of services not only to prevent unnecessary spending, but also to reduce the risk of unnecessary and intrusive procedures. However, a prepaid health care organization also needs to assure that all medically necessary services are provided to protect patient health and to prevent more costly care later. In addition, if a prepaid health care organization inappropriately limits care, the organization may be risking its reputation and jeopardizing its ability to compete in the marketplace. Although professional ethics, risk of malpractice liability, and market competition help ensure proper utilization of services, Medicare and Medicaid require both cost-reimbursed and risk organizations to have internal quality assurance programs, external quality review or medical audits, and other mechanisms to ensure proper delivery of health care services. Medicare and Medicaid contracts also are subject to periodic monitoring for compliance. In addition, the July 22, 1991, NPRM on civil money penalties and intermediate sanctions provides for sanctions that may be imposed when an HMO or CMP fails substantially to provide medically necessary services.

One mechanism many prepaid health care organizations use to encourage proper utilization is a financial incentive as part of a physician incentive plan. OBRA '90 defines a physician incentive plan as any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

A review and analysis of physician incentive plans in a sample of HMOs was conducted and presented in DHHS's 1990 Report to the Congress, "Incentive Arrangements Offered by Health Maintenance Organizations and Competitive Medical Plans to Physicians." The results showed a wide variety of incentive plans. There were differences in the types of incentive payments, the distribution of incentives, the basis for determining the incentive payments, and the parties or entities the incentives affected. This wide variety of physician incentive plans make it difficult to develop regulations that will apply to all arrangements. However, despite the differences, the Report examined several broad categories of

incentive arrangements, which we have considered in developing this proposal.

Physicians in prepaid health care organizations generally receive fee-for-service payments, salary, or capitation payments (a set dollar amount per patient) for the services they provide. Financial incentives may be used with the various types of physician payments to encourage appropriate levels of referral services. Referral services are any specialty, inpatient, outpatient, or laboratory services that a physician arranges but does not provide directly. Prepaid health care organizations may hold physicians or physician groups at risk for all or a portion of the cost of referral services to that they have a financial incentive to arrange for the provision of only medically necessary services. If the physician or physician group successfully controls the levels of referral services, it may receive additional compensation (an incentive payment) from the prepaid health care organization. The incentive payment may take the form of unused capitation, a returned withhold, or a bonus payment. Each of these methods is described below.

A capitation payment is a set dollar amount per patient per month that a prepaid health care organization pays to a physician or physician group to cover a specified set of services, without regard to the actual number of services provided to each person. The capitation may cover the physician's own services, referral services, or all medical services and/or administrative costs. If patient costs exceed the capitation amount, the physician must absorb these additional costs. If costs are below the capitation, the physician may keep the additional money.

Withholds are percentages of payments or set dollar amounts that a prepaid health care organization deducts from each physician's or physician group's payment (salary, fees, or capitation). The amount withheld is set aside in pools to pay for specialty referral services and inpatient hospital services. The withhold is at risk because it may be used to pay for referral services. When referral costs exceed a prepaid health care organization's budget, part or all of the withhold may be forfeited depending on the terms of the physician's contract. If referral costs do not exceed the ceiling, part or all of the withhold may be returned to the physician or physician group. Some plans limit the amount of the risk to the withhold; others hold the physician or physician group liable for amounts beyond the amount withheld. Withholds are most often used with fee-for-service or capitation payments.

Bonuses are payments prepaid health care organizations make to a physician or physician group beyond the physician's set salary, fee-for-service payments, or capitation. Bonuses may be based on a physician's or physician group's level of referral services, or may be independent (e.g., based on the overall performance of the organization). This system is most often used for salaried physicians in staff model HMOs.

If the physician or physician group has excessive referrals (as defined by the prepaid health care organization), it may not receive any incentive funds. In addition, the prepaid health care organization may hold the physician or physician group liable for referral costs that exceed a specified threshold. The prepaid health care organization may also increase the physician's or physician group's withhold or make other changes in its incentive arrangements.

Many physician incentive plans incorporate stop-loss protection to limit the liability of the physician or physician group. Most often, the stop-loss protection limits a physician's maximum liability per patient to a specific dollar amount. For example, the organization may limit a physician's liability to $5,000 per patient from his or her withhold fund, even if actual charges are higher. In some cases, prepaid health care organizations place an aggregate limit on the liability the physician could face. Instead of limiting liability to $5,000 per patient, the organization could limit total liability for all patients to $25,000. Stop-loss protection is particularly common with capitation arrangements.

There are other variables that may affect the amount of risk or the impact of financial incentives on physicians. For example, incentive payments may be calculated according to each individual physician's performance or by a physician group's performance. The size of the physician group will also impact the incentives. Performance may be evaluated over a long or short timeframe. The number of enrollees among whom the risk is spread and the amount of total income at risk vary. In addition, the relative health status of the patients involved increases risk if the enrollees are high utilizers, or may result in lower risk if the enrollees are healthier than the average enrollee. The percentage of the physician's practice that is made up of HMO/CMP/HIO patients, as opposed to fee-for-service patients, is also pertinent.

IV. Provisions of the Physician Incentive Plan Requirements

Section 9313(c) of OBRA '86 prohibited prepaid health care organizations with Medicare or Medicaid risk contracts from knowingly making incentive payments to a physician as an inducement to reduce or limit services to Medicare beneficiaries or Medicaid recipients. However, research conducted by DHHS, subsequent to the OBRA '86 prohibition, failed to find a link between the quality of care provided under the Medicare and Medicaid programs and the structure of physician incentive plans. Similarly, other researchers have found no linkage. Despite the lack of evidence, however, various media sources have alluded to quality problems related to physician incentive payments.

Sections 4204(a) and 4731 of OBRA '90 repealed the OBRA '86 prohibition of physician incentive plans in HMOs and, instead, required that physician incentive plans be regulated. To implement this legislation for Medicare, we are proposing to impose a new contract requirement pertaining to physician incentive plans. For Medicaid, we are proposing new requirements for the granting of FFP for State Medicaid agency contracts with HMOs and HIOs. These requirements address:

- The scope of the regulation;
- Disclosure requirements;
- Criteria for the determination of substantial financial risk;
- Requirements for physician incentive plans that place physicians at substantial financial risk;
- Prohibitions on certain physician payments; and
- Penalties.

Each category of requirements is discussed individually below.

We are proposing regulations, as required by OBRA '90, and after extensive consultation with the HMO industry, which we believe establish risk thresholds that are within the bounds of current industry practices and do not unduly restrict prepaid health care organizations' operational flexibility. However, if new information regarding the influence of various elements of physician incentive plans becomes available, we will evaluate it to determine if the approach in our proposed regulations should be reconsidered.

A. Scope

These proposed regulations apply to all Medicare- or Medicaid-contracting HMOs, CMPs, and HIOs with physician incentive plans. A physician incentive

plan is any compensation arrangement between an HMO, CMP, or HIO and a physician or a physician group that may directly or indirectly have the effect of limiting or reducing services provided to enrollees.

We are proposing to apply these requirements only to physician incentive plans that base incentive payments (in whole or in part) on services provided to Medicare beneficiaries or Medicaid recipients. We are proposing to limit the scope of the requirements based on the fact that sections 4204(a)(2) and 4731 of OBRA '90 amended sections 1876 and 1903(m) of the Act, which govern Medicare and Medicaid contracts, but did not amend title XIII of the Public Health Service Act, which governs all Federally-qualified HMOs. In addition, violations of the physician incentive plan requirements may result in civil money penalties and/or intermediate sanctions which only affect a plan's payment for, or ability to enroll Medicare beneficiaries or Medicaid recipients. We believe that these facts, taken together, reflect Congressional intent that this legislation apply only to Medicare and Medicaid enrollees of prepaid health care organizations.

We considered making these proposed regulations applicable to all physician incentive arrangements in HMOs, CMPs, and HIOs (including arrangements that affected only commercial enrollees), instead of limiting it to arrangements that affect only Medicare beneficiaries and Medicaid recipients. The statutory language uses the term "individuals enrolled with the organization," which could be interpreted as all of an organization's enrollees, not just Medicare or Medicaid enrollees as proposed in this rule. We are specifically seeking comments regarding the proposed scope of the regulations.

B. Disclosure

We are proposing that an HMO, CMP or HIO disclose to HCFA (for Medicare) or to the State Medicaid agency (for Medicaid) sufficient information on physician incentive plans that affect Medicare beneficiaries or Medicaid recipients so that HCFA or States may determine whether the organization is in compliance with our proposed requirements. We are proposing that the organization submit the information—

- When it applies for a contract;
- When it applies for a service area expansion (for Medicare);
- Thirty calendar days before a change in its incentive plan; or
- Within 30 calendar days of a request by HCFA (for Medicare) or the State Medicaid agency (for Medicaid).

In addition, we are proposing a one-time disclosure requirement. This one-time disclosure would require organizations that have Medicare or Medicaid contracts in effect when this proposal is published as a final rule to submit the required information within 30 days from the effective date of the final rule.

Under our proposed disclosure requirements, an organization must submit details about any incentive plan that affects Medicare beneficiaries or Medicaid recipients to HCFA (for Medicare) or to the State Medicaid agency (for Medicaid) so that these agencies may determine whether the plan meets all other proposed requirements for physician incentive plans. All organizations must submit sufficient information to determine whether the physician incentive plan includes the prohibited arrangements proposed at § 417.479(c) and whether the plan places physicians or physician groups at substantial financial risk, as defined in proposed § 417.479(d). Organizations that hold physicians or physician groups at substantial financial risk must also submit sufficient details regarding their enrollee surveys and stop-loss protection so that HCFA (for Medicare) or the State Medicaid agency (for Medicaid) can determine that they comply with the proposed standards. If HCFA or the State Medicaid agency determines that the information the organization supplies is insufficient, the organization will be required to supply additional information within 30 days of receipt of written notification.

For Medicare contracting HMOs and CMPs, we considered reviewing the physician incentive plans only at the time of site visits, which HCFA conducts at least every 2 years. However, if a prepaid health care organization changed its physician incentive plan shortly after a site visit, we may not learn of the new compensation arrangements for 2 years. Requiring disclosure of material 30 days before a change in the physician incentive plan will ensure that we have current information. It also will facilitate quick correction of plans if an organization is found out of compliance. Because HMOs and CMPs usually do not change their incentive plans more often than annually, we do not believe that this requirement will be unduly burdensome.

We also considered not requiring submission of the physician incentive plan each time it was substantially changed. However, we believe that it is important to maintain current information on the incentive plans. We also believe that this requirement is consistent with Congressional intent that HCFA be apprised of the specifics of an organization's current physician incentive plans.

C. Substantial Financial Risk

We are proposing that a physician or physician group be considered to be at substantial financial risk if more than a specified percentage (the risk threshold) of the prepaid health care organization's total potential payments to the physician or physician group is at risk, and the risk is based on the costs of services the physician or physician group does not provide (e.g., referrals to specialists or the costs of inpatient care). For purposes of determining substantial financial risk, we are defining payments as any amounts the organization pays physicians or physician groups for services they provide, plus amounts paid for administration and controlling levels or costs of referral services. Payments do not include bonuses or other forms of compensation that are not based on referral levels (such as bonuses based solely on quality of care provided, patient satisfaction, and overall plan performance).

"At risk" means amounts that a physician or physician group may or may not receive due to factors other than the number of patients served (for capitated physicians), hours worked (for salaried physician), or services performed by the physician (for fee-for-service physicians). For example, an amount would be "at risk" if its receipt depended on the status of the pool for referral services at a specified time.

Under this proposed rule, the risk threshold that determines substantial financial risk depends on the frequency with which the health plan assesses or distributes incentive payments. The risk threshold we are proposing for substantial risk for prepaid health care organizations that assess or distribute incentive payments no more often than annually is 25 percent. The risk threshold we propose for prepaid health care organizations that assess or distribute incentive payments more often than annually is 15 percent. The term "assess" means the final calculation of the incentive payment, after which further actions by the physician or physician group will not affect the incentive payment for the period being assessed. An incentive payment assessment does not include physician profiles or updates that inform providers of their performance under an incentive plan if the period being assessed has not expired.

Because physicians and physician groups voluntarily agree to participate in financial incentive arrangements, we are proposing an outlier approach in determining substantial financial risk. The DHHS Report to the Congress identified 25 percent and 30 percent as the upper ranges of withholds used under typical circumstances. In addition, the Group Health Association of America identified the median withhold percentage as 20 percent (GHAA Research Brief, Nov. 1987). Thus, our proposed rule establishes two thresholds for determining when substantial financial risk exists: (1) 25 percent of physician or physician group payments from prepaid health care organizations that assess or distribute incentive payments no more often than annually; and (2) 15 percent when the assessment or distribution occurs more often than on an annual basis. Further, we believe that an outlier approach is appropriate since there is no evidence that conventional physician incentive plans (as discussed in DHHS's 1990 Report to the Congress) have reduced access or caused quality of care problems.

It is also important to note that physician financial incentives do not work in isolation. There are other factors, such as the threat of malpractice, quality assurance programs, peer review, and professional ethics, that work in conjunction with financial incentive plans to ensure that the appropriate level of services is provided.

1. Substantial Financial Risk When Incentive Payments are Assessed No More Than Annually

We believe that allowing possible forfeiture of up to 25 percent of a physician's or physician group's payments (as defined in § 417.479(b)) is reasonable for purposes of determining whether substantial financial risk exists when incentive payments are made no more often than annually. As stated in DHHS's Report to the Congress concerning physician incentive plans, a large proportion of physicians in fee-for-service have bad debts ranging from 10 to 20 percent (i.e., bills never collected) and many have voluntarily reduced their fees as much as 20 to 25 percent below their usual charges for selected patients. Therefore, financial incentive plans that place physicians or physician groups at risk for 25 percent of their payments from prepaid health care organizations would appear to be of the same magnitude as the reduction in payments many physicians voluntarily accept in return for increased volume and protection against bad debt, and in response to marketplace competition. (See DHHS's 1990 Report to the Congress, p. V–37.)

The DHHS Report to the Congress also noted that prepaid health care organization physicians may perceive withholds as discounts. The Report states that "in many cases there is no expectation that more than some small proportion of the withhold will ever be paid. It can be argued that in these circumstances the withholds are in effect discounts . . .". (See p. V–37) The withhold is often used to cover unanticipated expenses and is usually returned only if there are plan surpluses.

Often, prepaid health care organizations use more than one type of compensation arrangement. If more than one type of arrangement is used, we will consider all the different risk arrangements placed on physicians or physician groups to determine whether they collectively exceed the 25-percent threshold. For example, if an organization's payments included withholds and bonuses, physicians or physician groups would be at substantial financial risk if the combined withhold amounts and potential bonuses comprised more than 25 percent of their total potential payments from the plan.

We would apply the 25-percent risk threshold as follows:

a. *Withholds*—Withholds on payments to physicians or physician groups to cover referral services put them at substantial financial risk when:

- The withholds are greater than 25 percent of payments for services they provide directly and administrative costs; or
- The withholds are 25 percent or less, but the physicians or physician groups are liable for amounts over the 25-percent threshold.

This would include withholds greater than 25 percent that an organization imposes because a physician repeatedly makes referrals for services that are not medically necessary. We emphasize, however, that physicians would only be considered to be at substantial financial risk if they are at risk for services they do not provide.

Example 1: An organization's annual payment to a physician for his or her services and administration total $100,000 and the organization withholds 25 percent (or $25,000) to cover deficits in the referral or inpatient hospital pool. The organization does not hold the physician liable for referral costs that exceed the withhold. The physician is not at substantial financial risk because he or she was not at risk for more than 25 percent of payments.

Example 2: An organization's annual payments to a physician total $100,000 and the organization imposes a 20-percent withhold ($20,000) for referrals. In addition, the organization holds the physician liable for up to $5,000 of any referral costs not covered by the withhold. The physician's referrals total $35,000. That is, the physician's referral costs exceed the withhold by $15,000. However, the organization does not hold its physicians liable for amounts over 25 percent of their payments. Since the physician is not liable for amounts over 25 percent of payments ($25,000), the physician is not at substantial financial risk. Had the organization held the physician liable for all amounts over the withhold (rather than limiting such liability to $5,000 for referral costs not included in the 20-percent withhold), the physician would have lost an additional $15,000 (or $10,000 more than the 25-percent risk threshold), and would have been at "substantial financial risk" because the physician's referral costs of $35,000 exceeded 25 percent of payments.

b. Bonuses—Bonuses are of concern only when they are based on levels of referral services arranged by physicians or physician groups. We believe that bonuses that represent a considerable portion of a physician's payments from an organization potentially provide the same incentives to limit services as withholds. This is true particularly since many physicians do not expect to receive their withholds back, and perceive return of all or a portion of a withhold as a bonus. Therefore, we are proposing to treat bonuses based on levels of referral services comparable to withholds.

Thus, we propose that substantial financial risk exists if bonuses represent an additional payment greater than 33 percent of the total amount the organization would pay the physician or physician group for services provided directly and for administrative costs if the bonus was not paid. The effect of this limit is to ensure that no more than 25 percent of a physician's total potential income is contingent on the status of the referral pool at the end of a specified period.

Thus, this proposal consistently limits liability of physicians or physician groups for referral services to 25 percent of payments received from an organization. Similarly, it limits bonuses based on a physician's or physician group's referral levels. The objective is to treat compensation arrangements that are based on utilization factors similarly. To the extent that surpluses or deficits accrue in risk pools that cover referrals and

inpatient care, individuals subject to withholds and bonuses would be treated comparably in the distribution of the surpluses or deficits. Bonuses that are not based on utilization will be evaluated to determine if they meet the definition of a physician incentive plan as defined in section 4202(a) of OBRA '90.

Example: An organization's annual payments to a physician total $75,000. If the physician does not exceed utilization targets for referral and inpatient hospital services, he or she is eligible for a $25,000 bonus (33 percent of $75,000). The physician is not at substantial financial risk because the bonus did not exceed 33 percent of payments.

c. *Combination Withhold and Bonuses*—We are proposing that, if a physician incentive plan consists of both withholds and bonuses as incentives to provide appropriate utilization, the organization must ensure that no more than 25 percent of the total potential payments to the physicians or physician groups is contingent on the cost of referral services. Stated another way, the amount of the payment without the withheld amount and the bonus must be at least 75 percent of the total amount of the payments, including the withhold and bonus.

There are two methods by which an organization may determine the appropriate bonus for any given withhold. Both methods will result in the same withhold and bonus percentages. In the first method, the organization calculates the withhold's portion of 25 percent. Then, using the remaining percentage, the organization prorates the 33 percent allowed for the bonus. In the second method, the organization enters the withhold percentage in the following equation: (Withhold %) = –0.75(Bonus %) + 25%.

Example: An organization withholds 20 percent of its payments to a physician under a contract that provides for the return of withholds plus bonuses. It wants to calculate the maximum bonus. By method 1, the organization calculates that 20 percent is four-fifths of 25 percent. The organization prorates the 33 percent threshold (1/5 x 33 percent) to calculate that it cannot give more than a 6.6-percent bonus without putting the physician at substantial financial risk. By method 2, the organization puts the withhold percentage in the equation: (20%) = –0.75(Bonus %) + 25%. This also calculates to be 6.6 percent.

d. *Capitation*—We are proposing that if an organization uses withholds or bonuses in conjunction with capitation payments that cover the costs of services provided directly and administrative costs, the requirements pertaining to withholds or bonuses would apply. If the organization uses only capitation and capitates its physicians for referral services, as well as for the services they provide directly, the physician or physician group would not be considered at "substantial financial risk" if—

- The organization specifies in the physician's or physician group's contract:
  + The maximum possible payments to be made under the capitation plan, if referral costs are low, and
  + The minimum possible payments to be made under the capitation plan, if referral costs are high; and
- The difference between the maximum and minimum payments based on referral levels is no more than 25 percent of the maximum payment. This is consistent with the threshold for withhold and bonus incentives.

The contract could either specify actual dollar amounts or a calculation from which HCFA or States could determine that the payment would meet the test. For example, the organization could state that the maximum payment would be $100 x (the number of patients) for low referrals and the minimum payment would be $75 x (the number of patients) for high referrals. If the organization does not clearly state the physician's or physician group's risk in the contract, as expressed in maximum and minimum payments to the physician or physician group, the incentive plan would be considered as "substantial financial risk."

In examples 1 and 2, an organization capitates a physician for all medical services at $200,000 annually. This capitation includes $100,000 for the services the physician provides directly and $100,000 for referral services.

Example 1: The organization pays for all referral services if the total cost of referral services exceeds $100,000. In other words, none of the physician's capitation for his own services is at risk. In addition, the HMO allows the physician to retain up to $33,000 of the unused capitation for referral services. The contract clearly states that:

- Regardless of the level of referral services, the physician will retain the capitation of $100,000 for services provided directly.
- If referrals are lower than anticipated, the physician may retain only the first $33,000 of savings. The highest possible payments from the HMO would be $133,000.

The amount at risk would be $133,000 minus $100,000, or $33,000, which is 24.8 percent of $133,000. Therefore, the physician is not at substantial financial risk.

Example 2: The organization does not allow the physician to retain any savings from the referral account. If referrals cost less than $100,000, the physician must return the remainder of the referral account to the HMO. If the referral costs are more than $100,000, the physician may be liable for up to 25 percent of the capitation for his own services. The contract clearly states that:

- If referrals exceed $125,000, the physician will receive no less than $75,000.
- If referrals are less than $100,000, the physician will receive no more than $100,000.

Since the difference ($25,000) between the highest possible payments ($100,000) and the lowest possible payments ($75,000) is no more than 25 percent of the maximum payments, the physician is not at substantial financial risk.

Example 3: The organization pays its physicians $200/patient/month for all health care services. Of that amount, $110 of the capitation cover the services the physician provides directly and the remaining $90 cover the costs of the referral services. The health plan specifies in its physician contracts that:

- The health plan will pay stop-loss protection for the physician if referral costs average more than $100 per patient. In other words, the physician will receive at least $100/patient/month.
- Physicians may retain only up to $23/patient/month, if referral costs average less than $90/patient/month. In other words, the physician will not retain more than $133/patient/month.

The difference between the highest possible payments ($133/patient/month × the number of patients) and the lowest possible payments ($100/patient/month) is $33/patient/month. This is 24.8 percent of the highest possible payments. Therefore the physician is not at substantial financial risk.

Arrangements that do not fit the above descriptions do not automatically put physicians at substantial financial risk. However, the organization must ensure that no more than 25 percent of the total payments to the physician or physician group for services provided directly and for administrative costs are at risk based on levels of referral services. Risk may exceed the threshold if stop-loss is provided and surveys are conducted.

2. Substantial Financial Risk When Incentive Payments Are Assessed More Often Than Annually

We are proposing a lower risk threshold (15 percent) for incentive

plans that assess or distribute incentive payments more than once a year. As noted in the DHHS Report to the Congress, referenced above, and in the General Accounting Office's (GAO's) Report to the Congress, "Medicare: Physician Incentive Payments by Prepaid Health Plans Could Lower Quality of Care," the shorter the timeframe over which incentive arrangements assess a physician's or physician group's performance, the more influence the incentive arrangement will have. This is because physicians or physician groups have fewer patients in a short timeframe over which to spread the risk of expensive treatment than in a long timeframe. Since these types of arrangements have the potential to have a stronger influence on physician behavior, we believe that the lower risk threshold is appropriate.

We would apply the 15-percent risk threshold in the same manner as we propose to apply the 25-percent risk threshold for incentive payments. As a reminder, the risk threshold applies only if the risk is based on a physician's or physician group's levels or costs of referral services. Specifically, we would implement the 15-percent risk threshold as follows:

a. Withholds—Withholds meet the risk threshold if:

- The withhold is greater than 15 percent of payments for services the physician or physician group provides directly plus administrative costs; or
- The withhold is 15 percent of payments or less, but the physician or physician group is liable for referral amounts over the 15-percent threshold.

b. Bonuses—Bonuses would exceed the risk threshold level if they represent more than 17.6 percent of the payments for administrative costs and services provided directly. Stated another way, bonuses would exceed the risk threshold if they exceeded 15 percent of the total of the payments plus the bonus.

c. Combination Withhold and Bonuses—If a physician incentive plan uses both withholds and bonuses, the organization must ensure that the physician's or physician group's liability is no more than 15 percent of their total payments. Stated another way, the amount of the payments without the withheld amount and the bonus must be at least 85 percent of the amount of the payments including the withhold and the bonus.

The organization may determine the appropriate bonus for any given withhold by two methods. First, the organization may use the prorating method. This method is discussed earlier in this preamble in the section entitled "Substantial Financial Risk When Incentive Payments Are Assessed No More Than Annually." Second, the organization may enter the withhold percentage in the following equation:

(Withhold %) = –0.85 (Bonus %) + 15%.

d. Capitation—If an organization uses withholds or bonuses in conjunction with capitation that covers the costs of services provided directly plus administrative costs, the requirements pertaining to withholds or bonuses would apply. If the organization uses capitation for referral services, we would evaluate the arrangement as discussed earlier in this preamble under the section entitled "Substantial Financial Risk When Incentive Payments Are Assessed No More Than Annually." The only difference would be that we would consider physicians and physician groups to be at substantial financial risk once their risk exceeded 15 percent of payments, as compared to the 25-percent risk threshold.

Arrangements that are not discussed in the preceding categories are not automatically assumed to create substantial financial risk. However, the organization must ensure that no more than 15 percent of the total payments to the physician or physician group are at risk based on referral services. Otherwise, the requirements to provide stop-loss protection and conduct periodic surveys under section 1876(i)(8)(A)(ii) of the Act will apply.

3. Other Options Considered for Defining Substantial Financial Risk

In addition to the definition presented in this NPRM, we considered several other options for defining substantial financial risk. We considered alternatives that would address many factors, in addition to the frequency of risk assessment, that affect the impact of the strength of incentive arrangements. First, we considered rating each factor that could influence an incentive plan. The organization's risk threshold would be the lowest risk threshold rating among its varying factors. For example, HCFA could rate the substantial financial risk threshold for Factor A (less than 5 physicians in a group) at 15 percent and Factor B (less than 250 prepaid health care organization patients) at 10 percent. An organization with no factors would have a threshold of 25 percent. An organization with Factor A would have a threshold of 15 percent. An organization with Factor B would have a threshold of 10 percent. An organization with both Factors A and B would also have a threshold of 10 percent, because the threshold of incentive plans with multiple factors would be the threshold of the lowest individual factor (in this case, Factor B, with a 10-percent threshold).

One specific factor we considered was the size of the physician's or physician group's patient panel. The use of a percentage risk will have varying effects on small and large patient panels. The following examples demonstrate these effects. In examples a. and b., the physician's total income is $100,000; the total patient panel is 1,000 patients; the HMO pays $100/patient/year; and the risk incentive is 25 percent.

a. Individual Physician, 100 HMO patients
Physician's income from HMO = $10,000 (one-tenth of total income)
Total dollars at risk = $2,500 (25% of $10,000)
Total income at risk = 2.5%

b. Individual Physician, 1,000 HMO patients
Physician's income from HMO = $100,000 (all income is from HMO)
Total dollars at risk = $25,000
Total income at risk = 25%

In examples c. and d., there are 10 physicians in the group, each sees 1,000 patients (total panel = 10,000 patients). As above, the HMO pays $100/patient/year and the risk incentive is 25 percent. The physician group's total income is $1,000,000.

c. Physician Group, 1,000 patients
Physician group's income from HMO = $100,000 (one-tenth of total income)
Total dollars at risk = $25,000 (25% of $100,000)
Total income at risk = 2.5%

d. Physician Group, 10,000 patients
Physician group's income from HMO = $1,000,000 (all of income)
Total dollars at risk = $250,000
Total income at risk = 25%

The smaller the patient panel, the more likely the physician or physician group is to lose the entire incentive payment. However, as the examples illustrate, in small patient panels, the incentive payment is also much smaller, both in absolute terms and as a percentage of total payments.

There are two theories on how this risk will affect physicians. First, in cases where the physician is more likely to lose the entire incentive payment (i.e., small patient panels), the incentive might have a larger effect. This would be true if the physician viewed each group of patients as a line of business. Even a small incentive payment may have a large effect if the physician believed that the loss of the incentive payment would make that line of business unprofitable.

On the other hand, a large patient panel would result in a larger absolute incentive payment that represents a larger proportion of total earnings. The physician or physician group may pay more attention to a larger incentive payment, even if he/she/it has a smaller chance of losing the entire payment. Since these results are contradictory, we did not base determinations of substantial financial risk on panel size. However, we are interested in comments that address expected physician behavior in relation to the size of the patient panel.

We also considered developing a grid that would adjust the risk threshold according to the combination of factors in an incentive plan. An organization would identify its factor on the grid to determine its threshold level for substantial financial risk. Possible factors include the size of the physician pool and the services for which physicians are at risk. For example, if Factor A's threshold is 15 percent and Factor B's is 10 percent, Factors A and B could be limited to 5 percent.

With the exception of the special rule for cases in which assessments are made more frequently than annually, we decided not to adjust the threshold according to factors for several reasons. There are many factors that theoretically have the potential to influence incentive arrangements. However, no empirical research has been done in this area. There is no information available on the strength of the factors on incentive plans or on the effect of combinations of factors on incentive plans. In addition, some factors could either strengthen or weaken the incentive plans. For example, small patient panels may either increase or decrease risk. The risk may increase because the physician or physician group has fewer patients among whom to spread the risk. The risk may decrease because a small patient panel would represent a small portion of the physician's total income. Therefore, the level of services the prepaid health care organization patients used would have only a small impact on the physician's total income. The lack of information in this area made it extremely difficult to rate factors or develop grids on appropriate thresholds.

As mentioned earlier, there is no evidence that the customary physician incentive plans in prepaid health care organizations have caused lack of access or quality of care concerns. Since there is so little information available regarding the impact of various factors on physician behavior, and since existing incentive plans have not been problematic, we believe that our approach is reasonable and appropriate. As more information regarding the influence of various elements of physician incentive plans becomes available, we will evaluate it and, if appropriate, reconsider the definition of substantial financial risk.

Another option we considered was to define substantial financial risk as the median percentage plan withhold, as defined in the DHHS Report to the Congress. We would compare the amount of risk under the incentive plan to the median withhold percentage. The DHHS Report identified 15 to 20 percent as the most common median withhold percentages (see p. V–37), and the Physician Payment Review Commission (PPRC) testified before the Congress that most withholds were between 10 and 20 percent. (However, the actual risk to the physicians is often higher. Many plans use bonuses as well as withholds. These medians only account for risk from withholds. Therefore, actual risk is higher than reflected in the DHHS report or PPRC testimony.) Under this option, an exceptions process could be used to permit plans to exceed the median withhold level if the organization could show that the higher level would not place physicians at "substantial financial risk," without triggering the beneficiary survey and stop-loss protection.

We did not choose this option since it would require us to implement a case-by-case review of incentive plans that have not been shown to be problematic. In addition, the term "substantial financial risk" implies a greater than average risk, which supports our use of an outlier approach. Also, as discussed earlier in this preamble, we believe that an outlier approach is reasonable given physician perceptions of withholds. We also want to provide consistent guidelines so that organizations can determine whether their incentive plans are in compliance with our proposed requirements prior to submission for HCFA review.

We are concerned about the appropriateness of the 25-percent threshold for substantial financial risk when incentive payments are assessed no more than annually. As stated previously, we relied, in part, on the DHHS Report that indicated that fee-for-service physicians typically lose 10 to 20 percent of their income to bad debt, and plan physicians may "discount" their charges by 20 to 25 percent. Therefore, the 25 percent risk for services the physicians or physician groups provide may be reasonable. However, with respect to the first instance, we are concerned that such discounts may be factored into the plan's payments to the physician or physician group. If so, the 25-percent risk would be applied to an already discounted amount, which may not be reasonable. We are seeking specific comments regarding how physician compensation is determined in different models of HMOs and whether 25 percent is reasonable for all types of prepaid health care organizations. We also are particularly interested in public comments on our proposed definition of "substantial financial risk" and other alternatives that we considered but did not select.

D. Requirements for Physician Incentive Plans That Place Physicians at Substantial Financial Risk

1. Enrollee Surveys

As required by section 1876(i) of the Act, we are proposing that HMOs, CMPs, and HIOs that place their physicians or physician groups at substantial financial risk must conduct enrollee surveys. We are proposing that the surveys must:

- Either survey all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (due to other than loss of eligibility in Medicaid) in the past 12 months, or survey a statistically valid sample of these same enrollees and disenrollees;
- Be designed, conducted, and results analyzed in accordance with commonly accepted principles of survey design and statistical analysis;
- Address enrollees'/disenrollees' satisfaction with the quality of the services provided and their degree of access to the services; and
- Be conducted at least annually.

We considered specifying additional parameters for the enrollee surveys, such as minimum sample size, minimum response rate, minimum confidence levels, or mandated survey questions. However, we recognize that there are a number of factors that are important to consider in designing an effective survey, and these factors may vary by HMO, e.g., the expected response rate to these surveys based on an organization's previous experiences in surveying enrollees and disenrollees. We further believe that these surveys will have the greatest utility if organizations can use the results of these surveys in conjunction with their other enrollee surveys and internal data collection efforts. For example, organizations may want to compare the survey results to information gathered on quality of care or disenrollment. If we are too prescriptive, organizations' use of the data collected might be limited. Also, stringent requirements

would be unnecessarily burdensome and could result in increased costs without correspondingly increased benefits.

Therefore, we are relying on HMOs to design their own surveys in accordance with commonly accepted principles of survey design and statistical analysis. HCFA (for Medicare) and States (for Medicaid) will review the survey methodology and results through the disclosure requirements and routine monitoring. We believe this affords the necessary safeguards to assure effective surveys. We are interested in comments addressing the approaches we did not take, as well as the proposed approach.

2. Stop-loss Protection

By statute, HMOs, CMPs and HIOs that place physicians or physician groups at substantial financial risk for referral services provided to Medicare beneficiaries and Medicaid recipients must provide adequate and appropriate stop-loss protection. We are proposing two levels of stop-loss protection depending on the incentive plan's risk threshold. If the risk threshold is 25 percent (the incentive plan assesses or distributes payments no more often than annually), then the stop-loss protection must protect physicians and physician groups from losses greater than 30 percent of the payments for services they provide, plus payments for administrative costs and controlling levels of referral services. If the risk threshold is 15 percent (the incentive plan assesses or distributes payments more often than annually), then the stop-loss protection must protect physicians and physician groups from losses greater than 20 percent of payments.

For capitated arrangements, it would be difficult to determine prospectively what stop-loss would cover 30 percent of payments for services the physicians or physician groups provide, plus payments for administrative costs and controlling levels of referral services. To make the stop-loss provisions for capitated arrangements comparable with the stop-loss provisions for bonus and withhold arrangements, we are proposing to permit no more than a 30-percent differential between the minimum and maximum payments a physician or physician group could receive. In other words, the difference between the maximum possible payments and the minimum possible payments could be no more than 30 percent of the maximum possible payments. If the incentive payments (or capitation) were paid more often than annually, the differential would be limited to 20 percent of the maximum payments.

These stop-loss levels are absolute limits on the physician's or physician group's liability. The stop-loss protection must cover all referral costs over 20 or 30 percent of payments, depending on how frequently incentive payments are made. Liability above the stop-loss protection level may not be transferred to physicians or physician groups in later contract years. Since this stop-loss protection limits total liability for all patients, it is referred to as an aggregate liability limit.

We decided to require more stop-loss protection for incentive plans that make payments more often than annually to make the provisions between the two risk thresholds equivalent. Under the 25-percent threshold, which applies to physician incentive plans that potentially exert less influence over physician behavior, the organization may increase the physician's or physician group's risk 5 percent beyond the risk threshold. Under our proposal, organizations with incentive plans with a 15-percent threshold would be able to increase the physician's or physician group's absolute risk beyond the risk threshold to the same extent, 5 percent. The organization can either provide or buy the stop-loss protection, or the physician or physician group can obtain the protection.

Many prepaid health care organizations design their stop-loss arrangements to limit liability for individual patients to a maximum dollar amount. This helps to protect against catastrophic cases. We considered placing limits on a physician or physician group's maximum liability per patient instead of using a maximum aggregate liability limit. However, without an aggregate limit on the physician's liability, a physician or physician group could ultimately receive zero net payments from the prepaid health care organizations.

Although individual stop-loss protection helps protect physicians and physician groups, a maximum limit on aggregate liability is necessary. Even if a physician group's liability is limited to no more than $10,000 per patient, if the physician group earns a good reputation for its treatment of AIDS patients, for example, it could easily be liable for all of its payments if increasing numbers of AIDs patients comprise the Medicare and Medicaid portion of the patient panel. Conceivably, the physician group would be forced to leave the prepaid health care organization, declare bankruptcy, or greatly restrict its treatment of all patients. Since it was Congressional intent to protect physicians and physician groups from unlimited liability, we believe that an aggregate limit is appropriate.

We also considered stop-loss standards that would permit more risk sharing between the prepaid health care organization and the physician or physician group. For example, we considered stop-loss protection that would cover 80 percent of referral costs when they exceeded 30 percent (or 20 percent) of payments. This would cause the physician or physician group to be liable for the remaining 20 percent of referral costs. However, we are proposing 100-percent coverage of referral costs over 30 percent (or 20 percent) of payments because even a limited risk-sharing arrangement could potentially cause a physician or physician group to be liable for large amounts of money. Under this arrangement, however, the organization could arrange any risk-sharing or stop-loss arrangements it finds effective for liability amounts less than 30 percent (or 20 percent) of payments.

We considered requiring the organization to provide the stop-loss insurance instead of permitting the physician or physician group to obtain the protection themselves. However, some physician groups prefer to obtain their own stop-loss protection rather than accepting the protection the organization offers (often the organization lowers capitation rates or charges physicians or physician groups for stop-loss protection). We wanted to retain this flexibility for physicians and physician groups. Since the legislation requires the organization to provide the stop-loss protection, we are requiring the organization to pay the cost of the portion of stop-loss protection that covers its enrollees in the physician incentive plan, or increase the amount of stop-loss protection to account for the physician's cost for stop-loss.

In cases where protection that meets the proposed standards is not available through the market, the organization would have to provide it directly. Regardless of how the stop-loss protection is provided, the organization must assure HCFA or the States that all physicians or physician groups that provide services to Medicare beneficiaries and Medicaid recipients and are at "substantial financial risk" for referral services have stop-loss protection that meets the regulatory requirements.

E. Prohibited Physician Payments

As required by OBRA '90, these regulations provide that physician incentive plans may operate only if no specific payment is made directly or

indirectly under the plan as an inducement to reduce or limit medically necessary services provided to a specific enrollee. This provision specifically prohibits bonuses or other payments to a physician or physician group as an inducement to limit or reduce medically necessary services for any individual patient. The proposed rule clarifies that indirect payments include items of money value, such as waivers of debt, or stock or equity in the organization. For example, an organization would be prohibited from paying a physician a $100 bonus or providing $100 of stock for each individual enrollee released from a hospital after delivery of a child in two days versus three days, if inpatient services were medically necessary on day three.

We considered interpreting "specific payments made indirectly as an inducement" as any payments that had the indirect effect of reducing medically necessary services. However, the statutory provision specifies that "no specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services . . .". The use of "indirectly" in the statute refers to the method by which payment is made, not to the effect of the payment. Therefore, we believe that the statutory language prohibits an alternative interpretation of the provision.

This proposed provision would not prohibit all bonuses based on utilization. For example, bonuses that are based on general utilization levels (i.e., bonuses determined by aggregate patient utilization) would be permitted.

F. Enforcement

Organizations that do not comply with these requirements may be subject to certain penalties. Determinations of non-compliance may result in civil money penalties, intermediate sanctions, and/or contract termination (for Medicare) or withholding of FFP (for Medicaid). The civil money penalties would be limited to $25,000 for each determination of non-compliance. Under the intermediate sanctions provision, HCFA (for Medicare) could suspend the enrollment of individuals into non-compliant plans and HCFA (for Medicare) or the State (for Medicaid) could suspend payment for new enrollees until it is satisfied that the basis for the determination is not likely to recur. The process for applying civil money penalties and intermediate sanctions would be the same process as that proposed in the July 22, 1991, NPRM discussed earlier in this preamble.

We are proposing that States determine compliance with these provisions for organizations contracting with Medicaid. Unlike Medicare, the Medicaid program is administered by State governments, pursuant to the Federal statutory and regulatory requirements, and a Medicaid State plan approved by HCFA. State governments are thus responsible for contracting with HMOs and other prepaid health care organizations, as well as for monitoring such contracts. In the case of Medicaid contracts, therefore, we believe that States are in the best position to monitor adherence to these specified requirements for physician incentive plans, to make determinations as to whether a violation has occurred, and to recommend intermediate sanctions based upon the nature of the violation. We are, therefore, proposing to rely upon States to perform the same monitoring functions in the Medicaid program that HCFA will perform in the Medicare program.

V. Revisions to the Regulations

Because these regulations would amend the civil money penalties and intermediate sanctions proposed in the July 22, 1991, NPRM discussed earlier in this preamble, we are republishing portions of that NPRM in these proposed regulations. Specifically, we are republishing proposed 42 CFR 417.495, which provides the requirements for imposing sanctions against eligible HMOs and CMPs, and proposed 42 CFR 434.67, which provides the requirements for imposing sanctions against HMOs with comprehensive risk contracts. We also are republishing 42 CFR 1003.100 through 1003.103 and 42 CFR 1003.106, which pertain to civil money penalties and assessments, incorporating the revisions proposed in the July 22, 1991, NPRM. While we are republishing the aforementioned sections of the regulations that were proposed in the July 22, 1991, NPRM for clarity, we request that public comments be limited to penalties and sanctions relating to physician incentive plans proposed in this NPRM.

To incorporate the policies and implement the statutory provisions described in this preamble, we propose to make the following revisions to title 42 of the regulations:

- In part 417, Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans, we would add to subpart L a new § 417.479, Requirements for physician incentive plans, to specify the requirements eligible organizations that use physician incentive plans must meet.
- We would add a new paragraph (a)(7) to proposed § 417.495, Sanctions against the organization, to specify an additional basis upon which sanctions may be applied against organizations.
- In part 434, Contracts, subpart D, we would amend § 434.44(a)(1) to incorporate these requirements into regulations governing certain HIOs that arrange for comprehensive services on a risk basis.
- In subpart E, we would add a new paragraph (a)(5) to proposed § 434.67, Sanctions against HMOs with comprehensive risk contracts, to specify an additional basis upon which sanctions may be applied against organizations.
- In subpart F, we would revise § 434.70 to condition FFP in State contracts with HMOs and certain HIOs on both the State and its HMO or HIO contractor meeting certain specified requirements for physician incentive plans.
- In part 1003, Civil Money Penalties and Assessments, we would revise § 1003.101 to include a definition for "physician incentive plan."
- We would revise § 1003.103 to add a new paragraph (e)(1)(vi) to specify an additional basis upon which the Office of the Inspector General may impose civil money penalties on organizations.
- We would revise §§ 1003.100, 1003.102, and 1003.106 to reference the physician incentive plan requirements, as appropriate.

VI. Collection of Information Requirements

Proposed regulations at § 417.479 (g) and (h), and § 434.70 (a)(2) and (b)(3) contain information collection or recordkeeping requirements or both that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Specifically, § 417.479(g) requires organizations that operate incentive plans that place physicians or physician groups at substantial financial risk to conduct enrollee surveys subject to conditions described in § 417.479(g)(1), and §§ 417.479(h) and 434.70(a)(2) concern the disclosure of information to HCFA or States concerning an HMO or CMP's physician incentive plan and the conducting of annual enrollee surveys. The respondents who will provide the information include HMOs, CMPs and HIOs that contract with the Medicare program or States and have physician incentive plans. Additionally, § 434.70(b)(3) requires States to obtain from certain HMO or HIO contractors

proof that the contractor meet the proposed requirements for physician incentive plans.

The public reporting burden for these information collections is estimated to be 50 hours per organization for survey requirements, 4 hours per organization for disclosure requirements, and 1 hour per State for each physician incentive plan for which proof of compliance is required.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

VII. Response to Comments

Because of the large volume of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VIII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare and publish an initial regulatory flexibility analysis for proposed regulations consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we treat all HMOs, CMPs, and HIOs as small entities.

These proposed regulations would amend the regulations governing certain Federally qualified HMOs and CMPs contracting with the Medicare program, and certain HMOs and HIOs contracting with the Medicaid program, by adding requirements for physician incentive plans that these entities must meet. We expect these proposed rules to affect approximately 300 HMOs, CMPs, and HIOs. However, we expect few incentive plans will require changes to comply with the regulations. In addition, since we expect that most current incentive plans already comply with the proposed regulations, we believe that we will rarely need to impose sanctions or penalties. Therefore, we expect very little costs to organizations. Likewise, we expect few additional surveys and additional stop-loss protection, with the result being that costs are incurred by only a small number of facilities.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed rules would not have a significant economic impact on the operations of a substantial number of small rural hospitals. We, therefore, have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan statistical area and has fewer than 50 beds. These proposed regulations affect HMOs, CMPs, and HIOs. Consequently, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on the operations of a substantial number of small rural hospitals and, therefore, have not prepared a rural impact statement.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 434

Grant programs—Health, Health maintenance organization (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure, Fraud; Grant programs—Health; Health facilities; Health profession; Maternal and child health; Medicaid; Medicare; Penalties.

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Chapter IV of title 42 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. Part 417 is amended as follows:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

2. A new § 417.479 is added to read as follows:

§ 417.479 Requirements for physician incentive plans.

(a) *Applicability.* The requirements in this section apply to physician incentive plans between eligible organizations and individual physicians or physician groups with whom they contract to provide medical services to enrollees. These requirements do not apply to financial incentive arrangements between physician groups (as defined in paragraph (b) of this section) and individual physicians who are members of such groups. These requirements only apply to physician incentive plans that base compensation (in whole or in part) on the use or cost of services provided to Medicare beneficiaries or Medicaid recipients.

(b) *Definitions.* For purposes of this section:

Bonus means a payment an organization makes to a physician or physician group beyond any salary, fee-for-service payments, capitation, or returned withhold.

Capitation means a set dollar payment per patient per unit time (usually per month) that an organization pays a physician or physician group to cover a specified set of services and administrative costs without regard to the actual number of services provided. The services covered may include the physician's own services, referral services, or all medical services.

Payments means any amounts the organization pays physicians or

physician groups for services they provide directly, plus amounts paid for administration and amounts paid (in whole or in part) based on levels and costs of referral services (such as withhold amounts, bonuses based on referral levels, and any other compensation to the physician or physician group to influence the use of referral services). Bonuses and other compensation that are not based on referral levels (such as bonuses based solely on quality of care provided, patient satisfaction, and participation on committees) are not considered payments for purposes of this subpart.

Physician group means a partnership, association, corporation, individual practice association, or other group that distributes income from practice among members according to a prearranged plan unrelated to the members' referral levels.

Physician incentive plan means any compensation arrangement between an organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided to Medicare beneficiaries or Medicaid recipients enrolled in the organization.

Referral services means any specialty, inpatient, outpatient, or laboratory services that a physician or physician group orders or arranges, but does not provide directly.

Risk threshold means the maximum risk, if the risk is based on referral services, to which a physician or physician group may be exposed under a physician incentive plan without being at substantial financial risk.

Withhold means a percentage of payments or set dollar amounts that an organization deducts from a physician's service fee, capitation, or salary payment, and which may or may not be returned to the physician, depending on specific predetermined factors.

(c) *Prohibited physician payments.* Organizations may operate physician incentive plans only if no specific payment of any kind is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided to an individual enrollee. Indirect payments include offerings of monetary value (such as stock options or waivers of debt) measured in the present or future.

(d) *General Rule: Determination of substantial financial risk.* Substantial financial risk occurs when the incentive arrangements place the physician or physician group at risk for amounts beyond the risk threshold, if the risk is based on the levels or costs of referral services. Amounts at risk based solely on factors other than a physician's or physician group's referral levels do not contribute to the determination of substantial financial risk. The risk thresholds are:

(1) 25 percent if the incentive plan distributes or assesses incentive payments no more often than annually; and

(2) 15 percent if the incentive plan distributes or assesses incentive payments more often than annually.

(e) *Arrangements that cause substantial financial risk when the risk threshold is 25 percent.* The following physician incentive plans cause substantial financial risk if risk is based (in whole or in part) on levels or costs of referral services, and incentive payments are distributed and/or assessed no more than annually:

(1) Withholds greater than 25 percent of payments;

(2) Withholds less than 25 percent of payments if the physician or physician group is potentially liable for amounts exceeding 25 percent of payments;

(3) Bonuses that are greater than 33 percent of payments minus the bonus;

(4) Withholds plus bonuses when the withholds plus bonuses equal more than 25 percent of payments. The threshold bonus percentage for a particular withhold percentage may be calculated using the formula—

$$\text{Withhold } \% = -0.75(\text{Bonus } \%) + 25\%;$$

(5) Capitation arrangements, if—

(i) The difference between the maximum possible payments and minimum possible payments is more than 25 percent of the maximum possible payments; or

(ii) The maximum and minimum possible payments are not clearly explained in the physician's or physician group's contract; and

(6) Any other incentive arrangements that have the potential to hold a physician or physician group liable for more than 25 percent of payments.

(f) *Arrangements that cause substantial financial risk when the risk threshold is 15 percent.* The following physician incentive plans cause substantial financial risk if risk is based (in whole or in part) on levels or costs of referral services, and incentive payments are distributed and/or assessed more often than annually:

(1) Withholds greater than 15 percent of payments;

(2) Withholds less than 15 percent of payments if the physician or physician group is potentially liable for amounts exceeding 15 percent of payments;

(3) Bonuses that are greater than 17.6 percent of payments minus the bonus;

(4) Withholds plus bonuses when the withholds plus bonuses equals more than 15 percent of payments for services they provided directly. The threshold bonus percentage may be calculated with the formula—

$$\text{Withhold } \% = -0.85(\text{Bonus } \%) + 15\%;$$

(5) Capitation arrangements, if—

(i) The difference between the maximum possible payments and minimum possible payments is more than 25 percent of the maximum possible payments; or

(ii) The maximum and minimum possible payments are not clearly explained in the physician's or physician group's contract; and

(6) Any other incentive arrangements that have the potential to hold a physician or physician group liable for more than 15 percent of payments.

(g) *Requirements for physician incentive plans that place physicians at substantial financial risk.* Organizations that operate incentive plans that place physicians or physician groups at substantial financial risk must do the following:

(1) Conduct enrollee surveys. These surveys must—

(i) Include either all current Medicare/Medicaid enrollees in the organization and those who have disenrolled (due to other than loss of eligibility in Medicaid) in the past 12 months, or a sample of these same enrollees and disenrollees;

(ii) Be designed, implemented, and analyzed in accordance with commonly accepted principles of survey design and statistical analysis;

(iii) Address enrollees/disenrollees satisfaction with the quality of the services provided and their degree of access to the services; and

(iv) Be conducted at least annually.

(2) Ensure that all physicians and physician groups at substantial financial risk have stop-loss protection in accordance with the following requirements:

(i) If the risk threshold is 25 percent, the stop-loss protection must cover the costs of referral services when the costs (beyond allocated amounts) exceed 30 percent of payments.

(ii) If the risk threshold is 15 percent, the stop-loss protection must cover the costs of referral services when the costs (beyond allocated amounts) exceed 20 percent of payments.

(iii) The organization may provide the stop-loss protection directly or purchase the stop-loss protection, or the physician or physician group may purchase the stop-loss protection. If the physician or physician group purchases the stop-loss protection, the organization must pay the portion of the premium that covers its enrollees or

reduce the level at which the stop-loss protection applies by the cost of the stop-loss.

(h) *Disclosure requirements for organizations with physician incentive plans.* All organizations must provide to HCFA information concerning its physician incentive plans as required or requested. The information must contain sufficient descriptive information to enable HCFA to determine whether the plan complies with the requirements specified in this section. Organizations must provide this information to HCFA—

(1) Upon application for a contract;

(2) Upon application for a service area expansion;

(3) 30 days before a change in its incentive plan;

(4) Within 30 days of a request by HCFA; and

(5) For organizations with a contract on [Insert effective date of final rule], by [Insert 30 days from effective date of final rule].

(i) *Sanctions against the organization.* HCFA may apply intermediate sanctions, or the Office of Inspector General may apply civil money penalties described at § 417.495, if HCFA determines that an eligible organization fails to comply with the requirements of this section.

3. A new § 417.495 is added to read as follows:

§ 417.495 Sanctions against the organization.

(a) *Basis for application of sanctions.* HCFA may apply intermediate sanctions specified in paragraph (d) of this section, as an alternative to termination, if HCFA determines that an organization with a contract under this part—

(1) Fails substantially to provide medically necessary items and services that are required to be provided to an individual covered under the contract, and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(2) Imposes premiums on individuals enrolled under this part in excess of premiums permitted;

(3) Acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;

(4) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) with the organization by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

(5) Misrepresents or falsifies information that is furnished—

(i) To HCFA under this part;

(ii) To an individual or to any other entity under this part;

(6) Fails to comply with the requirements of section 1876(g)(6)(A) of the Act relating to the prompt payment of claims;

(7) Fails to comply with the requirements of § 417.479(c) through (h) relating to physician incentive plans;

(8) Fails to meet the requirement in section 1876(f)(1) of the Act that not more than 50 percent of the organization's enrollment may be Medicare beneficiaries and Medicaid recipients; or

(9) Has a Medicare risk contract and—

(i) Employs or contracts with individuals or entities excluded from participation in Medicare under sections 1128 or 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

(b) *Notice of intermediate sanction.* Prior to applying the sanctions specified in paragraph (d) of this section, HCFA will send a written notice to the organization stating the nature and basis of the proposed sanction. A copy of the notice (other than a notice for the violation described in paragraph (a)(8) of this section) will be forwarded to the Office of Inspector General at the same time that it is sent to the organization. HCFA will allow the organization 15 days after the date if receives the notice to provide evidence that the organization has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable.

(c) *Informal reconsideration.* If the organization submits a timely response to HCFA's notice of intermediate sanction, HCFA will conduct an informal reconsideration that includes:

(1) Review of the evidence by a HCFA official who did not participate in the initial decision to impose a sanction; and

(2) If the decision to impose a sanction is affirmed on review, forwarding to the organization a concise written decision setting forth the factual and legal basis for the decision.

(d) *Intermediate sanctions.* If HCFA determines that an organization has committed a violation described in paragraph (a) of this section and this determination is affirmed on review in the event the organization timely contests the determination under paragraph (b) of this section, HCFA may—

(1) Require the organization to suspend new applications for enrollment from Medicare beneficiaries after the effective date in paragraph (e)(1) of this section; or

(2) Suspend payments to the organization for any individuals who apply for enrollment after the effective date in paragraph (e)(1) of this section.

(e) *Effective date and duration of intermediate sanctions.* (1) Intermediate sanctions will be made effective 15 days after the date that the organization is notified of the decision to impose the sanctions, unless the organization timely seeks reconsideration under paragraph (c) of this section, in which case the intermediate sanction generally will be effective on the date the organization is notified of HCFA's decision under paragraph (c)(2) of this section.

(2) If HCFA determines that the organization's conduct poses a serious threat to an enrollees' health and safety, the intermediate sanction may be made effective on a date prior to issuance of HCFA's decision under paragraph (c)(2) of this section.

(3) The sanction will remain in effect until HCFA notifies the organization that HCFA is satisfied that the basis for applying the sanction has been corrected and is not likely to recur.

(f) *Termination by HCFA.* As an alternative to the sanctions described in paragraph (d) of this section, HCFA may decline to renew an organization's contract in accordance with § 417.492(b), or terminate its contract in accordance with § 417.494(b).

(g) *Civil money penalties.* If HCFA determines that an organization has committed an act or failed to comply with a requirement described in paragraph (a) of this section (with the exception of the violation described in paragraph (a)(8) of this section), HCFA will convey such determination to the Office of Inspector General. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the organization in addition to or in lieu of the intermediate sanctions imposed by HCFA.

PART 434—CONTRACTS

B. Part 434 is amended as follows:

1. The authority citation for part 434 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(p)(2), and 1903(m) of the Social Security Act (42 U.S.C. 1302, 1396(a)(4), 1396a(p)(2), and 1396b).

2. In subpart D, § 434.44(a)(1) is revised to read as follows:

§ 434.44 Special rules for certain health insuring organizations.

(a) A health insuring organization that first enrolls patients on or after January 1, 1986, and arranges with other providers (through subcontract, or through other arrangements) for the delivery of services (as described in § 434.21(b)) to Medicaid enrollees on a prepaid capitation risk basis is—

(1) Subject to the general requirements set forth in § 434.20(d) concerning services that may be covered and § 434.20(e) which set forth the requirements for all contracts, the additional requirements set forth in §§ 434.21 through 434.38 and the Medicaid agency responsibilities specified in subpart E of this part; and

* * * * *

3. In subpart E, a new § 434.67 is added to read as follows:

§ 434.67 Sanctions against HMOs with comprehensive risk contracts.

(a) *Basis for application of sanctions.* The agency may recommend that the intermediate sanction specified in paragraph (e) of this section be imposed if the agency determines that an HMO with a comprehensive risk contract—

(1) Fails substantially to provide medically necessary items and services that are required under law or under the contract to be provided to an individual covered under the contract, and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(2) Imposes premiums on individuals covered under the contract in excess of premiums permitted;

(3) Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to re-enroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1903(m) of the Act) by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

(4) Misrepresents or falsifies information that is furnished—

(i) To HCFA or the State agency under section 1903(m) of the Act; or

(ii) To an individual or to any other entity under section 1903(m); or

(5) Fails to comply with the requirements of § 417.479 (c) through (g) of this chapter relating to physician incentive plans, or fails to submit to the State Medicaid agency its physician incentive plans as required or requested in § 434.70.

(b) *Effect of an agency determination.* (1) When the agency determines that an HMO with a comprehensive risk contract has committed one of the violations identified in paragraph (a) of this section, the agency must forward this determination to HCFA. This determination becomes HCFA's determination for purposes of section 1903(m)(5)(A) of the Act, if HCFA does not reverse or modify the determination within 15 days.

(2) When the agency decides to recommend imposition of the intermediate sanction specified in paragraph (e) of this section, this recommendation becomes HCFA's decision, for purposes of section 1903(m)(5)(B)(ii) of the Act, if HCFA does not reject this recommendation within 15 days.

(c) *Notice of intermediate sanction.* If a determination to impose intermediate sanctions becomes HCFA's determination in accordance with paragraph (b)(2) of this section, the agency must send a written notice to the HMO stating the nature and basis of the proposed sanction. A copy of the notice will be forwarded to the OIG at the same time that it is sent to the organization. The agency will allow the HMO 15 days after the date it receives the notice to provide evidence that the HMO has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable.

(d) *Informal reconsideration.* (1) If the HMO submits a timely response to the agency's notice of intermediate sanction, the agency will conduct an informal reconsideration that includes—

(i) Review of the evidence by an agency official who did not participate in the initial recommendation to impose a sanction; and

(ii) A concise written decision setting forth the factual and legal basis for the decision.

(2) The agency decision under paragraph (d)(1)(ii) of this section will be forwarded to HCFA and will become HCFA's decision if HCFA does not reverse or modify the decision within 15 days. The agency will send the HMO a copy of HCFA's decision under this section.

(e) *Intermediate sanction.* If a HCFA determination that an HMO has committed a violation described in paragraph (a) of this section is affirmed on review under paragraph (d) of this section, or is not timely contested by the HMO under paragraph (c) of this section, HCFA, based upon the recommendation of the agency, may deny payment for new enrollees of the HMO pursuant to section 1903(m)(5)(B)(ii) of the Act. Under §§ 434.22 and 434.42, this denial of payment by HCFA for new enrollees automatically results in a denial of agency payments to the HMO for the same enrollees. A "new enrollee" is defined as an enrollee that applies for enrollment after the effective date in paragraph (f)(1) of this section.

(f) *Effective date and duration of intermediate sanction.* (1) Unless an HMO timely seeks a reconsideration in accordance with paragraph (d) of this section or HCFA determines the violation poses a serious threat to enrollees' health or safety, intermediate sanctions will be made effective 15 days after the date that the HMO is notified of the HCFA decision to impose the sanction in accordance with the procedures specified in paragraph (c) of this section. If the HMO seeks reconsideration under paragraph (d) of this section, the intermediate sanction generally will be effective on the date the organization is notified of HCFA's decision under paragraph (d)(1)(ii) of this section.

(2) If HCFA, in consultation with the agency, determines that the HMO's conduct poses a serious threat to an enrollee's health and safety, the intermediate sanction may be made effective on a date prior to issuance of the decision under paragraph (d)(1)(ii) of this section.

(3) The sanction will remain in effect until HCFA, in consultation with the agency, is satisfied that the basis for applying the sanction has been corrected and is not likely to recur.

(g) *Civil money penalties.* If a determination that an organization has committed a violation under paragraph (a) of this section becomes HCFA's determination under paragraph (b)(1) of this section. HCFA will convey such determination to the Office of Inspector General. In accordance with the provisions of 42 CFR Part 1003, the OIG may impose civil money penalties on the organization in addition to or in lieu of the intermediate sanctions imposed under this section.

(h) *Performance of functions.* HCFA retains the right to independently perform the functions assigned to the agency in paragraphs (a) through (f) of this section.

(i) *State plan requirements.* The State plan must include a plan to monitor for violations specified in paragraph (a) of this section and for implementing the provisions of this section.

4. In Subpart F, § 434.70 is revised to read as follows:

§ 434.70 Condition for FFP.

(a) FFP is available in expenditures for payments to contractors only for the periods that—

(1) The contract—

(i) Meets the requirements of this part;

(ii) Meets the appropriate requirements of 45 CFR Part 74; and

(iii) Is in effect; and

(2) The HMO or HIO contractor complies with the requirements specified in § 417.479 (c) through (g) of this chapter, and has supplied sufficient information on its physician incentive plan to the State Medicaid agency to enable the State to determine whether the plan complies with such requirements. The HMO or HIO must supply this information to the State Medicaid agencies—

(i) Upon application for a contract;

(ii) Within 30 days of a change in its incentive plan;

(iii) Within 30 days of a request by the State or HCFA; and

(iv) For organizations with a contract on December 14, 1992 of final rule, by January 13, 1992 of final rule.

(b) HCFA may withhold FFP for any period during which—

(1) The State fails to meet the State plan requirements of this part;

(2) Either party to a contract substantially fails to carry out the terms of the contract; or

(3) The State fails to obtain from each HMO or HIO contractor proof that it meets the requirements for physician incentive plans specified in § 417.479 (c) through (g) of this chapter.

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

II. Chapter V of title 42 would be amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

A. Part 1003 is amended as follows:

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a); republishing paragraph (b)(1) introductory text revising paragraphs (b)(1)(iv) and (b)(1)(v) and adding a new paragraph (b)(1)(vi) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128(c), 1128A, 1140, 1842(j), 1842(k), 1876(i)(6), 1882(d), and 1903(m)(5) of the Social Security Act and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7, 1320a–7(c), 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m)), 11131(c) and 11137(b)(2)).

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use, or permit access to information reported under part B of title IV of Pub. L. 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and Social Security program words, letters, symbols, and emblems; or

(vi) Substantially fail to provide an enrollee with required medically necessary items and services, or who engage in certain marketing, enrollment, reporting, claims payment, employment, or contracting abuses, or who do not meet the requirements for physician incentive plans for Medicaid specified in § 417.479 (c) through (g) of this title.

* * * * *

3. Section 1003.101 is amended by adding, in alphabetical order, definitions for the terms *adverse effect, contracting organization, enrollee,* and *physician incentive plan* to read as follows:

§ 1003.101 Definitions.

* * * * *

Adverse effect means medical care has not been provided and the failure to provide such necessary medical care has presented an imminent danger to the health, safety, or well-being of the patient, or has placed the patient unnecessarily in a high-risk situation.

* * * * *

Contracting organization means a public or private entity, inclusive of a health maintenance organization (HMO), competitive medical plan (CMP), or health insuring organization (HIO) which meets the requirements of section 1876(b) or is subject to the requirements in section 1903(m)(2)(A) of the Social Security Act, and which has contracted with the Department or a State to provide medical items and services to Medicare beneficiaries or Medicaid recipients.

Enrollee means an individual who is eligible for Medicare or Medicaid, and who enters into an agreement to receive medical items and services from a contracting organization that contracts with the Department under titles XVIII or XIX of the Social Security Act.

* * * * *

Physician incentive plan means any compensation arrangement between a contracting organization and a physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to enrollees in the organization.

* * * * *

4. In § 1003.102, paragraph (b) introductory text is republished and a new paragraph (b)(8) is added, to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(8) Is a contracting organization that HCFA determines has committed an act or failed to comply with the requirements set forth in §§ 417.495(a), 434.67(a), and 434.80(c) of this title.

* * * * *

5. Section 1003.103 is amended by revising paragraph (a) and adding new paragraph (e), to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(e)(1) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization has:

(i) Failed substantially to provide an enrollee with required medically necessary items and services, if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee;

(ii) Imposed premiums on enrollees in excess of amounts permitted under section 1876 or title XIX of the Act;

(iii) Acted to expel or to refuse to re-enroll a Medicare beneficiary in violation of the provisions of section 1876 of the Act, and for reasons other than the beneficiary's health status or requirements for health care services;

(iv) Misrepresented or falsified information furnished to an individual or any other entity under section 1876 or 1903(m) of the Act;

(v) Failed to comply with the requirements of section 1876(g)(6)(A) of

the Act, regarding prompt payment of claims; or

(vi) Failed to comply with the requirements of § 417.479(c) through (h) of this title for Medicare, and § 417.479(c) through (g) of this title for Medicaid, regarding certain prohibited incentive payments to physicians.

(2) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization with a contract under section 1876 of the Act:

(i) Employs or contracts with individuals or entities excluded from participation in Medicare, under sections 1128 or 1128A of the Act, for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

(3) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $100,000 for each determination that a contracting organization has:

(i) Misrepresented or falsified information furnished to the Secretary under section 1876 of the Act, or to the State under section 1903(m) of the Act; or

(ii) Acted to expel or to refuse to re-enroll a Medicare beneficiary or Medicaid recipient because of the individual's health status or requirements for health care services, or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1876 or 1903(m) of the Act) with the contracting organization by enrollees whose medical condition or history indicates a need for substantial future medical services.

(4) In cases where enrollees are charged more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional $15,000 penalty for each individual not enrolled when it is determined that a contracting organization has committed a violation described in paragraph (e)(3)(ii) of this section.

(6) For purposes of paragraph (e) in this section, a violation is defined as each incident where a person has committed an act or failed to comply with a requirement set forth in §§ 417.495(a), 434.67(a), or 434.80(c) of this title, as determined by HCFA.

6. Section 1003.106 is amended by adding new paragraph (a)(4); redesignating paragraph (d) as paragraph (e) and republishing it; and adding a new paragraph (d) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(4) In determining the appropriate amount of any penalty or assessment under § 1003.103(e), the OIG will consider as appropriate:

(i) The nature and scope of the required medically necessary item or service not provided and the circumstances under which it was not provided;

(ii) The degree of culpability of the contracting organization;

(iii) The seriousness of the adverse effect that resulted or could have resulted from the failure to provide required medically necessary care;

(iv) The harm which resulted or could have resulted from the provision of care by a person that the contracting organization is expressly prohibited, under sections 1876(i)(6) or 1903(p)(2) of the Act, from contracting or employing;

(v) The harm which resulted or could have resulted from the contracting organization's expulsion or refusal to re-enroll a Medicare beneficiary or Medicaid recipient;

(vi) The nature of the misrepresentation or fallacious information furnished by the contracting organization to the Secretary, State, enrollee, or other entity under sections 1876 or 1903(m) of the Act;

(vii) The extent to which the failure to provide medically necessary services could be attributed to a prohibited inducement to reduce or limit services under a physician incentive plan and the harm to the enrollee which resulted or could have resulted from such failure. It would be considered an aggravating factor if the contracting organization knowingly or routinely engaged in any prohibited practice which acted as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee in the organization;

(viii) The history of prior offenses by the contracting organization, or principals of the contracting organization, including whether at any time prior to determination of the current violation or violations the contracting organization or any of its principals was convicted of a criminal charge, or was held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services; and

(ix) Such other matters as justice may require.

* * * * *

(d) In considering the factors listed in paragraph (a)(4) of this section, for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty:

(1) *Nature and circumstances of the incident.* It would be considered a mitigating circumstance if, where more than one violation exists, the appropriate items or services not provided were:

(i) Few in number, or

(ii) Of the same type and occurred within a short period of time.

It would be considered an aggravating circumstance if such items or services were of several types and occurred over a lengthy period of time, or if there were many such items or services (or the nature and circumstances indicate a pattern of such items or services not being provided).

(2) *Degree of culpability.* It would be considered a mitigating circumstance if the violation was the result of an unintentional, unrecognized error, and corrective action was taken promptly after discovery of the error.

(3) *Failure to provide required care.* It would be considered an aggravating circumstance if the failure to provide required care was attributable to an individual or entity that the contracting organization is expressly prohibited by law from contracting or employing.

(4) *Use of excluded individuals.* It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in the prohibited practice of contracting or employing, either directly or indirectly, individuals or entities excluded from the Medicare program under sections 1128 or 1128A of the Act.

(5) *Routine practices.* It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in any discriminatory or other prohibited practice which has the effect of denying or discouraging enrollment by individuals whose medical condition or history indicates a need for substantial future medical services.

(6) *Prior offenses.* It would be considered an aggravating circumstance if at any time prior to determination of the current violation or violations, the

contracting organization or any of its principals was convicted on criminal charges or held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services. The lack of prior liability for criminal, civil, or administrative sanctions by the contracting organization, or the principals of the contracting organization, would not necessarily be considered a mitigating circumstance in determining civil monetary penalty amounts.

(e) (1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

(Catalog of Federal Domestic Assistance Program No. 93.773—Medicare—Hospital Insurance Program; No. 93.774—Medicare—Supplementary Medical Insurance Program; No. 93.778—Medical Assistance Program.)

Dated: September 25, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: September 30, 1992.

Brian B. Mitchell,

Principal Deputy Inspector General, Department of Health and Human Services.

Approved: October 28, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–29769 Filed 12–11–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 92–255; FCC 92–492]

Remove Unnecessary Regulations Regarding Magnetic Resonance Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to a petition from the National Electrical Manufacturers Association, the Federal Communication Commission is proposing to amend its rules to remove unnecessary regulations regarding Magnetic Resonance Systems. Elimination of such regulations will reduce the amount of time and money required to bring new non-consumer, medical magnetic resonance systems to market.

DATES: Comments must be submitted by March 1, 1993. Reply comments must be submitted by March 31, 1993.

ADDRESSES: All comments and reply comments should be addressed to the Office of the Secretary, Federal Communication Commission, Washington DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Errol Chang, Technical Standards Branch, Office of Engineering and Technology, (202) 653–7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (Notice) in ET Docket No. 92–255, FCC 92–492, adopted on November 4, 1992 and released on December 7, 1992. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., room 640, Washington DC 20036.

Paperwork Reduction

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor: Downtown Copy Center, 1990 M Street NW., room 640, Washington, DC 20036, (202) 452–1422. Persons wishing to comment on this collection of information should direct their comments to Mr. Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20554, (202) 395–4814. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Federal Communications Commission: Federal Communications Commission, Office of Managing Director, paperwork Reduction Project, Washington DC 20554. For further information contact Ms. Judy Boley, (202) 632–7513.

OMB Number: 3060–0329

Title: Equipment Authorization—Verification 2.955

Respondents: Business or other for profit, small business or organizations

Frequency of Response: Recordkeeping

Estimated Annual Burden:

Number of recordkeepers: 5,655

Annual hours per recordkeepers: 18

Total annual burden: 101,790

Needs and Uses: Equipment testing is performed and data is gathered to provide information to aid in controlling interference to radio communications. Data collected verifies compliance of equipment to the FCC Rules. The information is retained by the equipment manufacturer, and made available only at the request of the Commission.

Summary of Notice

1. By this action, the Commission proposes to amend Part 18 of its rules to remove regulations that unnecessarily increase the amount of time and money required to bring new non-consumer, medical magnetic resonance (MR) systems to market. These systems are used by medical professionals to study the molecular structure of a patient for diagnostic and monitoring purposes. This proposal addresses a petition for rule making filed by the National Electrical Manufacturers Association on January 29, 1992.

2. Part 18 of the rules sets forth requirements designed to minimize the potential for interference to radio and TV services by industrial, scientific and medical (ISM) equipment. Such equipment generates radio frequency (RF) energy in order to perform a non-communications related function. Common examples of consumer ISM equipment include microwave ovens and RF lighting devices. Examples of non-consumer ISM equipment include industrial heaters, RF stabilized arc welders and magnetic resonance equipment. Before ISM equipment can be marketed in the United States, it must comply with the technical standards and equipment authorization procedures specified in part 18.

3. As indicated in NEMA's petition, as well as comments received regarding NEMA's petition, it appears that MR systems pose little risk of interference because of the way they are designed and installed. We note that there are relatively few installations of MR systems (under 1000), and in the event

that measures need to be taken to correct interference, the locations of the equipment are known. We also recognize that the authorization requirement is burdensome and costly for MR systems. Given the low volume production of MR systems, this can significantly affect the unit cost of each system, contributing to the increasing costs of medical care.

4. We agree with NEMA that the circumstances presented here are similar to those that led us earlier to exempt non-consumer medical ultrasonic equipment from part 18 rules. We are unaware of any interference that resulted from the medical ultrasonic equipment exemption. On balance, we tentatively conclude that the costs of our technical standards and authorization requirements for MR systems are unwarranted given the low risk of interference. Accordingly, we are proposing to amend part 18 to exempt MR systems from the technical standards and authorization requirements that now apply to that equipment. We will, of course, continue to apply the requirements of 47 CFR 18.111(b) that operators of MR systems correct any harmful interference that may occur. The proposed rule changes are set forth below.

5. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. *Regulatory Flexibility Act.* As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980).

7. *Comment Dates.* Pursuant to the applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 1, 1993 and reply comments on or before March 31, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Initial Regulatory Flexibility Analysis

Reason for Action: This rule making proceeding is initiated to obtain comment on whether the Commission's technical standards and authorization requirements regarding magnetic resonance equipment are necessary.

Objective: The Commission seeks to remove regulations regarding magnetic resonance equipment that appear unnecessary in order to enable advanced medical devices to be brought to market faster and more efficiently.

Legal Basis: The action proposed is authorized under sections 4(i), 302, 303(g) and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements: None.

Federal Rules which Overlap, Duplicate or Conflict with These Rules: None.

Description, Potential Impact and Number of Small Entities Involved: This action would relieve manufacturers and importers of magnetic resonance equipment used for medical diagnosis and monitoring of the responsibility to meet Commission testing and record keeping requirements. We estimate that there are no more than 20 such entities.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objective: None.

List of subjects in 47 CFR Part 18

Medical devices, Hospitals, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secreatary.

Proposed Text

Part 18 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304 and 307.

2. Section 18.107 is revised by adding a new paragraph (j) after the "note" to read as follows:

§ 18.107 Definitions.

* * * * *

(j) *Magnetic resonance equipment.* A category of ISM equipment in which RF energy is used to create images and data representing spatially resolved density of transient atomic resonances within an object.

3. Section 18.121 is revised to read as follows:

§ 18.121 Exemptions.

Non-consumer ultrasonic equipment, and non-consumer magnetic resonance equipment, that is used for medical diagnostic and monitoring applications is subject only to the provisions of § 18.105, §§ 18.109 through 18.119, and § 18.303.

[FR Doc. 92–30180 Filed 12–11–92; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR 571

[Docket No. 92–66; Notice 1]

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: NHTSA is considering initiating rulemaking to upgrade the protection currently provided by Federal Motor Vehicle Safety Standard (FMVSS) No. 301, Fuel System Integrity. The agency desires to reduce the number of fire-related casualties to occupants of passenger cars and light trucks and vans, in all types of crash modes—frontal, side, rear, and rollover. To assist NHTSA in developing specific

proposals, the agency requests answers to questions contained at the end of this notice.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (prefereably in 10 copies) to the Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cohen, Division Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: FMVSS No. 301 first became effective for passenger cars in 1968 and for multipurpose passenger vehicles (i.e., passenger vans and sport utility vehicles) and trucks of 10,000 pounds or less Gross Vehicle Weight Rating (GVWR) in 1976. The standard also applies to all school buses, and NHTSA has granted a petition to consider extending the standard to trucks over 10,000 pounds GVWR. However, the context of this notice relates to passenger cars and light trucks and vans (including sport utility vehicles), hereafter termed LTVs.

Since the standard first applied to passenger cars in 1968, it has been revised several times, most significantly in rulemaking actions taken by NHTSA in the period 1973–76. As a result, the initial standard has been extended to vehicle types other than passenger cars and to crash modes other than frontal crashes. The standard, as it applies to passenger cars and LTVs, requires fuel system integrity in a 30 mph frontal fixed barrier crash, a 30 mph rear moving barrier crash, and a 20 mph lateral moving barrier crash. The standard also requires a static rollover test, after the above crashes. Fuel system integrity is defined by limiting the amount of fuel leakage from the crashed vehicle, during and up to 30 minutes after the crash.

The purpose of the standard "is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes" (49 CFR 571.301, S2). In a 1983 evaluation of the standard, NHTSA concluded that FMVSS No. 301 had been effective in reducing post-crash fires and estimated that as a result there were 6,500 fewer passenger car fires annually, resulting in 400 fewer deaths and 630 fewer moderate and serious injuries per year. ("Evaluation of FMVSS 301–75, Fuel System Integrity: Passenger Cars," DOT HS–806–335, January 1983). However, the agency noted that newer vehicles seemed to be experiencing an increasing fire rate and pointed out that the evaluation used limited data. Because of these concerns, and the fact that the 1983 report did not study fires in light truck crashes, the agency reevaluated FMVSS No. 301 in November 1990 ("Motor Vehicle Fires in Traffic Crashes and the Effects of the Fuel System Integrity Standard;" DOT HS 807 675).

The conclusions of this more extensive evaluation were much different from the one conducted 7 years earlier. While the evaluation still found that FMVSS No. 301 reduced post-crash fires (by 14 percent or 3,900 fewer fires annually) for passenger cars, it did not find any statistically significant reductions in fire-related injuries or deaths. For LTVs, the evaluation found that implementation of the standard had no effect at all.

Commenters to the evaluation raised questions concerning the data used by NHTSA and its analysis techniques. Commenters were also concerned about the specific identification of where the fire started and whether vehicle changes to fuel systems, type of gasoline, and changes related to emission standards may have affected fire rates over time. After analyzing these comments, the agency concluded that the results in the evaluation were valid. NHTSA's response can be found in Docket No. 82–21, Notice 03 (82–21–NO3–008).

While fires are relatively rare events (only occurring in one percent of towed vehicles in crashes), they tend to be severe, in terms of casualties. Each year, there are approximately 29,000 occupants exposed to fires occurring in passenger cars and LTV's. Four to five percent of occupant fatalities occur in crashes involving fire and approximately 1,400 occupants per year die in such crashes. In addition, another 9,000 occupants are injured (Crashworthiness Data System, 1991). This number of casualties, coupled with the finding that the existing standard has had a minimal effect, leads the agency to conclude that an upgrade of the standard may be appropriate.

A recent analysis of fires in tow-away crashes ("Fires and Burns in Towed Light Passenger Vehicle Crashes" by Partyka, July 1992) showed that most fires occurred in frontal crashes (59 percent), with about an equal number occurring in rollover, side impacts, and rear impacts (12–14 percent each). Each year, an estimated 1,000 occupants of vehicles in crashes with fires had second or third degree burns over at least six percent of the body and 550 of these were fatalities with second or third degree burns over more than 90 percent of the body. Nearly 650 people per year with moderately severe or greater (AIS≥2) burns had no other moderate or greater injury reported.

In addition to the above-mentioned analysis of tow-away crashes, the agency has undertaken a hard copy analysis of 1991 NASS cases involving fires, and a FARS analysis related to fires, to attempt to obtain more information on how fires occur, in preparation for suggesting regulatory countermeasures. The difficulty in analyzing fires in vehicle crashes is that the vehicles involved are often totally destroyed, resulting in uncertainty as to the vehicle component failure that resulted in the fire.

At this time, while the agency continues its data and other analyses, it is appropriate to seek guidance and information from the public on the most effective means to reduce vehicle fires. Also affecting the agency's decision to consider rulemaking to upgrade the standard is a recent petition by Volkswagen to allow the use of the dynamic test soon to be required by FMVSS No. 214, Side Impact Protection, to be substituted for the 20 mph lateral test in FMVSS No. 301. Volkswagen claims the FMVSS No. 214 test is a more severe test than that in FMVSS No. 301. The agency, in conducting FMVSS No. 214-type dynamic tests, noted fuel leakage in several tests, also indicating that this is a more severe test than the lateral test in FMVSS No. 301. The agency has granted that petition. To help focus its investigation and possible regulatory upgrades, the agency seeks responses to the following questions:

1. Should the standard be upgraded by requiring higher impact speeds? What impact speeds are most appropriate? Why?

2. Is there any reason to continue to have different impact speeds for frontal and rear crashes as compared to side crashes? If so, why?

3. Should the current impact barriers (a moving flat barrier for rear and side impacts and a fixed barrier for frontal impact be replaced by a moving contoured barrier, such as is used to test school buses for fuel system integrity or other types of barriers? Are the current impact barriers representative of typical real-world crash situations? Are there other specifications or test conditions of FMVSS No. 301 which are not representative of real-world crashes?

4. Should the standard be upgraded by requiring all vehicles that have a Gross Vehicle Weight Rating (GVWR) of

10,000 pounds or less be subjected to the impact test requirement for large school buses? The standard requires that the impact test for large school buses (those with a GVWR greater than 10,000 pounds) be conducted with a 4,000 lb, 30-mph-moving, contoured barrier impacting the bus at any point and angle.

5. Should the FMVSS No. 301 side impact requirement be replaced by the FMVSS No. 214 type of dynamic side impact test as has been promulgated for passenger cars? Are there available data on the locations of the fuel system that are vulnerable in a side impact?

6. Accident data show that fire risk increases significantly with vehicle age. Should a test be added to the standard for testing the effect of aging of vehicles related to fires? If so, what types of tests should be considered? For example, should a test be added to the standard for testing the impact of weathering and rust problems on the fuel system and the vehicle? Or, should vehicle maintenance requirements (i.e., as given in owner's manuals) require periodic inspection/replacement of certain fuel system components, such as connector hoses which may harden/crack with age?

7. Do occupants that die with serious burns have other injuries that prevented their escape or were they unconscious from fire-related gases or from impacts? Please report any other findings that seem unique to fire-related death or injury accidents.

8. FMVSS No. 301's fuel leakage limit requirements implicitly address evacuation time from the vehicle. Considering differences of ignitability of gasoline, diesel and other applicable alternative fuels, should the standard specify different levels of permissible fuel leakage based on the type of fuel used?

9. Should a test be added to the standard for testing nonmetallic fuel tanks?

10. What available or foreseeable technologies could be used to improve fuel system integrity? What are their associated costs?

11. From the above discussions, would improving fuel system integrity by upgrading the standard prevent a reasonable number of serious occupant burns and fatalities or are other changes in vehicle materials and design needed as well?

12. The agency would like to consider international harmonization with other regulations and standards. Would an upgrade of FMVSS No. 301 increase or decrease the "window of compliance" with other foreign regulations and standards? For example, the current ECE Regulation No. 34 (for passenger cars only) and the Japanese Technical Standard for Fuel Leakage in Collision, etc. (for passenger cars and MPVs up to 5,600 pounds GVWR) do not require side impact tests or rollover tests.

The agency requests that responses be as specific and quantitative as possible.

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped post card in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: December 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-30183 Filed 12-8-92; 3:30 pm]

BILLING CODE 4910-59-M

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49 CFR Parts 571 and 585

[Docket No. 74-14; Notice 79]

RIN 2127-AE46

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Vehicle manufacturers are currently permitted to comply with the automatic crash protection requirements by means of any technology that provides the specified levels of protection in a 30 miles per hour barrier crash test. The two types of automatic crash protection currently installed in vehicles are air bags and automatic belts. However, a new law (the NHTSA Authorization Act of 1991) provides that the agency shall amend the automatic crash protection requirements to specify that air bags must be the means installed to provide the requisite automatic protection. This notice proposes to amend the automatic crash protection requirements to conform to this statutory directive.

In addition, this notice proposes to require that certain information about air bags be labeled in vehicles equipped with air bags. These labeling requirements are intended to ensure that consumers will have access to important safety information with respect to the air bags installed in their vehicles.

DATES: *Comment closing date:* Comments on this notice must be received by NHTSA no later than February 12, 1993.

Proposed effective date: If adopted in a final rule, the amendments to part 571 and part 585 proposed in this notice would become effective 180 days after publication of the final rule in the **Federal Register**.

Proposed compliance dates: See the Proposed Compliance Dates section at the beginning of **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments should refer to the docket and notice number set forth in the heading of this notice and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. The NHTSA Docket Section is open to the public from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–4911.

SUPPLEMENTARY INFORMATION:

Proposed Compliance Dates

At least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 would have to be so equipped.

At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt. Manufacturers may count towards compliance with the 80 percent requirement those light trucks it produces that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position.

Every light truck manufactured on or after September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions.

Statutory Mandate

President Bush signed into law the "Intermodal Surface Transportation Efficiency Act of 1991" on December 18, 1991 (Pub. L. 102–240). That Act is intended to develop a national intermodal surface transportation system and sets forth guidance and mandates for several different modal administrations within the Department of Transportation. Sections 2500–2509 of this Act are called the "National Highway Traffic Safety Administration Authorization Act of 1991." These sections authorize appropriations for the agency for fiscal years 1992 through 1995 and direct the agency to take certain actions.

Section 2508 of this Act requires NHTSA to issue, not later than September 1, 1993, a final rule making certain amendments to Standard No. 208. This section requires that automatic crash protection must be provided by an inflatable restraint (i.e., an air bag) in all passenger cars and light trucks, and that the seating positions protected by an air bag shall also be equipped with a manual lap/shoulder belt. A schedule of dates by which all vehicles shall be equipped with air bags and manual lap/shoulder belts at both front outboard seating positions is set forth in the Act. The Act also requires certain information about air bags and manual lap/shoulder belts to appear in the owner's manual of new vehicles and requires NHTSA to establish procedures for providing temporary exemptions from the air bag requirement if there is an interruption in the supply of air bag components due to unavoidable events not within the control of vehicle manufacturers. This notice proposes to implement the statutory mandates in section 2508.

Proposed Requirements

1. Vehicles Proposed To Be Covered by this Rulemaking

Section 2508 includes in its air bag mandate all those vehicles that NHTSA had determined in previous rulemaking proceedings should be subject to the existing requirements for automatic crash protection. Accordingly, this notice proposes that all passenger cars be subject to the air bag mandate.

In addition, all trucks, multipurpose passenger vehicles (mpv's), and buses (except walk-in van-type trucks and vehicles designed to be sold exclusively to the United States Postal Service) with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less would also be subject to this air bag mandate. These trucks, mpv's and buses are collectively referred to as "light trucks" throughout the remainder of this preamble. The inclusion of light trucks in this proposal reflects the statutory determination that vehicles such as small pickups, vans, and sport utility vehicles should be equipped with both driver and front passenger air bags.

In connection with the extension of other safety standards to light trucks, some manufacturers of light trucks manufactured in more than one stage have commented that their vehicles should be excluded from the extended requirements because it would not be practicable for such vehicles to comply with the extended safety standard. NHTSA notes that section 2508 draws no distinction between light trucks that are manufactured in a single stage and those that are manufactured in more than one stage. Instead, that section specifies that all light trucks manufactured after September 1, 1998 shall be equipped with air bags and manual lap/shoulder belts at the driver's and front right passenger's seating positions, regardless of how many stages it took to manufacture the light truck. This proposal tracks the statute in that it would require multistage light trucks to comply with the same requirements that would apply to comparable single stage light trucks.

2. Schedule for Compliance

This proposal would simply adopt the schedule for compliance set forth in section 2508. With respect to passenger cars, this would mean that at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 would have to be so equipped.

With respect to light trucks, this proposal would require that at least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 be equipped with an air bag and a manual lap/shoulder belt. However, unlike with passenger cars, the Act does not require the air bag and manual lap/shoulder belt to be provided at both the driver's and right front passenger's seating position on light trucks manufactured between September 1, 1997 and September 1, 1998. Instead, manufacturers may count towards compliance with the 80 percent air bag requirement those light trucks it produces that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position.

This conclusion is based upon the provision in section 2508(a)(1) that: "This section supplements and revises, but does not replace, Federal Motor Vehicle Safety Standard 208, including the amendment to such Standard 208 of March 26, 1991 (56 FR 12472), extending the requirements for automatic crash protection, together with incentives for more innovative automatic crash protection, to trucks, buses, and multipurpose passenger vehicles." Particularly significant in that sentence are the references to the March 26, 1991 amendment and to the incentives for more innovative automatic crash protection. The March 26, 1991 amendment is the final rule that extended the automatic crash protection requirements to light trucks. That final rule established a phase-in implementation of the automatic crash protection requirements for light trucks, with a specified percentage of each

manufacturer's production of light trucks required to be equipped with automatic crash protection beginning with vehicles manufactured on or after September 1, 1994. The phase-in for light truck automatic crash protection ends on September 1, 1997, after which date the 1991 final rule requires all light trucks to be equipped with automatic crash protection.

During the phase-in period (i.e., from September 1, 1994 through August 31, 1997), the 1991 final rule provided a number of "credits" for light truck manufacturers. Among these credits are "carry-forward" credits, which permit manufacturers that exceed the specified minimum percentage of light trucks equipped with automatic crash protection in one year of the phase-in to count those excess vehicles as credits toward the specified percentage during any subsequent model years of the phase-in (S4.2.5.5 (b), (c), and (d)); the "1.5 truck credit," which allows manufacturers to count light trucks equipped with an air bag or other non-belt means of automatic crash protection at the driver's position and any type of automatic crash protection at the right front passenger's position as 1.5 trucks equipped with automatic crash protection during the phase-in (S4.2.5.5(a)(1)); and the "one truck credit" provision, which allows manufacturers to count light trucks equipped with an air bag or other non-belt means of automatic crash protection at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position as one truck equipped with automatic crash protection during the phase-in (S4.2.5.5(a)(2)).

By the terms of the March 1991 final rule, all of these credits but one expire as of September 1, 1997, the date for full implementation of the automatic crash protection requirements. The only credit that the March 1991 final rule allows after September 1, 1997 is the "one truck credit." From September 1, 1997 through August 31, 1998, the March 1991 final rule allows manufacturers to count light trucks equipped with an air bag or other non-belt automatic crash protection at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position as a truck that complies with the automatic crash protection requirement (see S4.2.6).

When viewed against this background, it seems clear that the reference in section 2508 to incentives for more innovative automatic crash protection means the "one truck credit" provision. It also seems clear from the statutory provision that section 2508 "does not replace" the incentives for more innovative automatic crash protection in the March 1991 final rule that Congress intended the one truck credit provision to be available to manufacturers during the period from September 1, 1997 to August 31, 1998. Consistent with this conclusion is the last sentence in section 2508(b)(2): "The incentives or credits available under Standard 208 (as amended by this section) prior to September 1, 1998, shall not be available to the manufacturers to comply with the 100 percent requirement to this paragraph on and after such date." This sentence contemplates at least the possibility that credits will continue to be available through August 31, 1998.

Accordingly, this notice would retain the one truck credit during the period from September 1, 1997 to August 31, 1998. Manufacturers would be permitted to count trucks produced during this period that are equipped with an air bag at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position toward compliance with the 80 percent air bag requirement.

Every light truck manufactured on or after September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. The March 1991 rule established no credits that could have been used by manufacturers for light trucks manufactured on or after September 1, 1998. To ensure that there will be no credits after that date, section 2508(b)(2) provides, as noted above, that the incentives or credits available under Standard 208 prior to September 1, 1998, shall not be available to the manufacturers to comply with the 100 percent requirement on and after such date.

3. Information to Appear on Labels and in Owner's Manuals

Section 2508(a)(2) reads as follows:

> The amendment to such Standard 208 shall also require, to be effective as soon as possible after the promulgation of such amendment, that the owner manuals for passenger cars and trucks, buses, and multipurpose passenger vehicles equipped with an inflatable restraint include a statement in an easily understandable format—
>
> (A) That the vehicle is equipped with an inflatable restraint referred to as an "air bag" and a lap and shoulder belt in either or both the front outboard seating positions;
>
> (B) That the air bag is a supplemental restraint;
>
> (C) That it does not substitute for lap and shoulder belts which must also be correctly used by an occupant in such seating position to provide restraint or protection not only from frontal crashes but from other types of crashes or accidents; and
>
> (D) That all occupants, including the driver, should always wear their lap and shoulder belts, where available, or other safety belts, whether or not there is an inflatable restraint.

This notice proposes to require that this information be provided in owner's manuals of vehicles equipped with air bags. In response to the statutory directive that this requirement for information to appear in owner's manuals take effect as soon as possible, this notice proposes that such a requirement become effective 180 days after publication of a final rule. The agency has tentatively concluded that this proposed 180 day leadtime is needed to allow vehicle manufacturers to incorporate this new language into the owner's manuals of their vehicles equipped with air bags, and is short enough so that the public will be provided with this information in new vehicle owner's manuals as soon as possible. Commenters are specifically invited to address this tentative agency conclusion.

NHTSA would also like to point out that this proposed requirement would not establish the precise language that must appear in the owner's manual. Instead, it proposes that manufacturers be required to provide this information in their owner's manuals, and allows the manufacturer to choose the language it believes will most effectively convey the information to readers of the owner's manual.

The agency is proposing additional information requirements in response to a petition for rulemaking from the Motor Vehicle Manufacturers Association (MVMA), requesting changes in the information required to be provided with respect to air bags. The MVMA petition notes that S4.5.1 of Standard No. 208 requires a permanently affixed label on each vehicle equipped with an air bag. The label must indicate the manufacturer's recommended schedule for the maintenance or replacement of such air bag. MVMA stated that, while such a labeling requirement was appropriate when it was established, technical progress with air bags since the mid 1970's has made this labeling requirement no longer appropriate.

In support of this position, MVMA stated that most vehicles currently equipped with air bags are permanently labeled with a statement to the effect that no regular maintenance of the air bag system is necessary. Such information does not, in MVMA's view, rise to the level that it ought to be permanently labeled on each vehicle. MVMA asked that NHTSA update this requirement to limit it to vehicles equipped with air bag systems that require some periodic maintenance or replacement.

MVMA's petition also asked that other information be required to be labeled in vehicles equipped with air bags, so as to increase the effectiveness of those air bags. MVMA asked that the air bag label be revised to require that information be provided on at least the following topics:

a. Limitations of air bag effectiveness (i.e., they are most effective in frontal crashes, but do not deploy in low speed frontal crashes; they are not effective in side, rear, or rollover crashes),

b. The supplementary nature of air bag protection (i.e., safety belts must be worn to provide maximum safety protection),

c. Cautions about proper positioning of child safety seats in vehicles equipped with air bags (i.e., children riding in rear facing safety seats should not be riding in the right front seating position of vehicles equipped with an air bag for that seating position), and

d. Cautions to other passengers not to sit unnecessarily close to the point from which the air bag will be deployed for that seating position (e.g., the steering wheel, the instrument panel, etc.).

NHTSA has tentatively concluded that it agrees with MVMA's suggestion that the air bag labeling requirements should be updated to reflect the technical advances that have been made with air bags since the time when the current labeling requirements were promulgated. The agency tentatively agrees that the maintenance schedule labeling requirement no longer results in consumers being provided with particularly useful information. MVMA notes that, pursuant to the requirement, most current vehicles equipped with air bags are labeled with information akin to the following: "Regular Maintenance of the Air Bag System is not Required." Accordingly, this notice proposes to delete the requirement for scheduled air bag system maintenance and replacement information to appear on a permanently affixed label if the vehicle manufacturer does not recommend any scheduled maintenance or replacement. Such information would still have to be provided on a permanently affixed label for those vehicles equipped with air bag systems for which the vehicle manufacturer specifies some regular maintenance or replacement schedule.

With respect to the four additional types of information that MVMA asked be included on the label, NHTSA has tentatively determined that MVMA's request has merit. It seems appropriate to inform the public about the types of occupant behavior and uses that may reduce the effectiveness of air bags in a frontal crash. Furthermore, with the statutory mandate in section 2508 for all new passenger cars and light trucks to be equipped with air bags, this type of information can help ensure that vehicle occupants will receive the maximum safety benefit from these air bags in the future.

However, the agency is not proposing to require that all of this information be permanently affixed to a label on the vehicle, as MVMA requested. NHTSA has tentatively concluded that providing all of the information MVMA requested on a permanent label would potentially create an "information overload," in response to which consumers would pay less attention to this information. Instead, the agency is proposing in this notice that a label be permanently affixed to the sun visor for each front outboard seating position equipped with an air bag. This label could be positioned on either side of the sun visor, so that it was constantly visible or so that it was visible only when the sun visor was extended down, at the vehicle manufacturer's option. This label would set forth simple statements about the do's and don'ts that should be followed to obtain the maximum safety protection from the air bag. NHTSA is proposing that the following information appear on the sun visor label:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child restraints in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

In addition, if regular maintenance or scheduled replacement is recommended for the air bag, the recommended maintenance or replacement schedule would also have to appear on this label.

The agency has proposed these statements for the label because they will ensure that vehicle occupants will have the basic information necessary to receive the maximum safety protection from their air bags. The statement about the need to wear the safety belt even though an air bag is present is required to appear in the owner's manual, pursuant to section 2508, and is so fundamental to safety protection that NHTSA has tentatively concluded that it should be presented first in the sun visor label. The second proposed statement, about not installing rearward-facing child restraints at seating positions equipped with an air bag, is information that was released in a NHTSA Consumer Advisory Bulletin on December 10, 1991. The third proposed statement, about not sitting unnecessarily close to the air bag, reflects the same premise for adult occupants as the second statement reflects for child occupants. That is, sitting or leaning too close to the air bag creates the chance of injury from a deploying air bag. NHTSA has tentatively concluded that this information would be useful to the public. The fourth proposed statement, about not putting any item over the air bag cover or between the air bag and the occupant, is important information so that the occupant will not inadvertently do something that would prevent the air bag from providing the level of occupant protection it is designed to provide. The fifth and final proposed statement would direct the vehicle occupant to the vehicle owner's manual for further information.

The agency invites public comment on the proposed content of these sun visor labels. Specifically, the agency is interested in comments about whether these five proposed statements are believed to be adequate, or whether the commenter believes that some of these statements are unnecessary or that some other statements should be substituted for one or more of these proposed statements. The agency is especially interested in the commenter's reasons for believing that these statements should be adopted as proposed or that the proposal should be modified.

NHTSA is concerned that some means may be necessary to alert vehicle occupants to the presence of the label on the sun visor, especially if manufacturers choose to affix the label on the side of the sun visor that will not generally be visible. One means of alerting occupants to the sun visor label would be to place a label in a constantly visible location within the occupant compartment alerting occupants to the label on the sun visor. For instance, a label could be placed on each air bag cover stating: "Contains air bag. Please read important safety information labeled on sun visor." The agency requests comments on the need for such a requirement to appear in the final rule on this subject.

NHTSA is also considering other possibilities for alerting the occupant to the label on the sun visor. One possibility is that the air bag covers could be embossed with a new universal air bag symbol, such as the one currently being used on the vehicle identification number (VIN) plate by some vehicle manufacturers. In conjunction with this, it might be valuable to affix a special removable warning label to the air bag cover on all new and used air bag vehicles being displayed for sale. This removal label would explain the reason for the new symbol and call attention to the warning label(s) on the sun visor(s). As part of this approach, a public education campaign could be undertaken to educate the public as to the meaning of the new symbol and the need for first-

time owners of vehicles with air bags to learn what they can do to obtain the maximum safety protection from their air bags. The agency seeks public comments on this approach to alerting occupants and on this issue generally.

The final aspect of this proposed scheme for providing the public with important safety information about air bags would be information in the vehicle owner's manual, in addition to the statutorily-required information on the importance of belt use. The owner's manual would also be required to include information about proper positioning of occupants relative to the air bag (e.g., not to sit unnecessarily close to the air bag), if any such instructions are appropriate for the air bag system installed in the vehicle; information about the positioning of child seats at positions equipped with an air bag (e.g., rear-facing child seats should not be installed at this position and the seat should be adjusted as far rearward as possible if a forward-facing child seat is installed), if any such instructions are appropriate; information about not placing objects on the air bag cover or between the occupant and the air bag, if any such instructions are appropriate; and any other information that is appropriate so that the occupants can receive the full protection the air bag system is designed to provide.

As was proposed above for the information to appear in the owner's manual with respect to the importance of belt use, the agency is not proposing the exact language that must appear in the owner's manual. Instead, this proposed requirement is simply that vehicle manufacturers provide the necessary information. It allows the manufacturers the flexibility to present this information in the most effective manner and in a way that is tailored to the features of the air bag system in the particular vehicle.

4. Temporary Exemption From Air Bag Requirements

Section 2508(c) requires the agency to prescribe the procedures to be followed by manufacturers in applying for temporary exemptions from the air bag requirements, as well as the content and timing of any such applications. That section also provides that a temporary exemption from the air bag installation requirements shall be granted only if the agency "finds that there has been a disruption in the supply of any inflatable restraint component, or a disruption in the use and installation by the manufacturer of such component due to unavoidable events not under the control of the manufacturer, that will prevent the manufacturer from meeting its anticipated production volume of vehicles with (air bags)." In addition, the statute provides that any temporary exemptions must be conditioned upon the manufacturer recalling the exempted vehicles promptly to install the omitted air bag(s) when adequate supplies of air bags become available again. The statute also provides that notice of each application for temporary exemption shall be published in the **Federal Register** and each notice of grant or denial shall be published in the **Federal Register**, along with the reasons therefor.

NHTSA is proposing to provide a temporary exemption section in Standard No. 208 that is modeled closely after the temporary exemption provisions set forth in 49 CFR part 555. Each application for a temporary exemption from the air bag requirement would have to identify the components for the air bag system that have become unavailable due to circumstances beyond the manufacturer's control, explain briefly the cause of the disruption and why it is beyond the manufacturer's control, estimate the anticipated duration of the disruption, set forth any other information the manufacturer believes the agency should consider in reaching a decision on the application, and contain an unconditional statement by the applicant that an air bag will be installed in every vehicle at those seating positions for which a temporary exemption is granted in response to the application. The vehicle manufacturer would also have to propose a reasonable time within which it would recall all vehicles granted an exemption pursuant to this application and install the omitted air bags, and explain why it believes that period of time is reasonable.

Upon receipt of an application for temporary exemption, NHTSA would review the application to see if it was complete. The manufacturer would be advised if the application did not contain all the necessary information. If the application were complete, NHTSA would publish notice of the application in the **Federal Register**. After reviewing the information available to it, NHTSA would issue its decision to grant or deny the exemption application. In no event would NHTSA's final decision on the application be issued later than 60 days after the date on which a complete petition was received.

If NHTSA were to grant a temporary exemption, it would state that the exemption applies to vehicles manufactured between specified dates. The exemption would generally begin upon the date the grant notice was published in the **Federal Register** and end on the date specified in the notice. Under the proposal, the exempted manufacturer would be required to affix a label within the passenger compartment of every vehicle not equipped with an air bag. This label would state in block capitals:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. ____.

This label could only be removed from the vehicle after the manufacturer had recalled the vehicle and installed the required air bag(s). Upon removal of the label, the vehicle would be certified as complying with all the occupant crash protection requirements of Standard No. 208.

In addition, this notice proposes that if any vehicles are delivered without an air bag, pursuant to an exemption, the manufacturer shall furnish written notification to the dealer and to the first purchaser of the vehicle for purposes other than resale that:

1. This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).
2. The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).
3. The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the vehicle manufacturer's control.
4. The vehicle manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.
5. If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

Commenters are asked to address these proposed exemption procedures. It would be helpful to the agency if the commenter would carefully read section 2508(c) while preparing the comments, so as to minimize instances where commenters ask the agency to omit some requirement mandated by that section. For instance, comments to the effect that there should be no exemption procedures or that special labels should not be required on exempted vehicles will not prove very helpful, since the statute expressly states that there must be exemption procedures and that

exempted vehicles must be labeled. It will be more helpful if commenters identify areas where they believe the agency has not implemented a statutory mandate or areas where the commenter believes the agency has imposed an unnecessary requirement that goes beyond that which is statutorily required.

5. Reporting Requirements

Whenever the agency specifies a phase-in of some performance requirement, it is necessary for enforcement of that phase-in to require manufacturers to report at the end of the production period its total production of vehicles and the number of such vehicles that are certified as complying with the relevant performance requirement. Accordingly, since section 2508 mandates a phase-in of air bags as the exclusive means of complying with the automatic crash protection requirements, it will be necessary to amend the reporting requirements to require manufacturers to report what percentage of their production is equipped with air bags certified as complying with the crash protection requirements. This notice proposes to amend Part 585 in this manner.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts that would be associated with this proposal if it were adopted as a final rule. Based on that consideration, NHTSA has determined that this proposal is not "major" within the meaning of Executive Order 12291, because the costs should be well below the $100 million threshold for categorizing a rule as "major." However, this proposal is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of the level of public interest. Accordingly, NHTSA has prepared a preliminary regulatory evaluation (PRE), a copy of which has been placed in the docket for this rulemaking action. Interested persons may obtain copies of that PRE by writing to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590.

The PRE may be briefly summarized as follows. Based on the information currently available, the agency believes that almost all manufacturers were planning on using air bags in their vehicles produced during the model years affected by this proposal. Hence, the costs associated with this proposal should be very small. There may be some minor costs associated with the proposed labeling requirements for the sun visors, but again the agency believes that most manufacturers are already labeling the sun visors in their cars equipped with air bags.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. The agency does not believe that this proposal will have any significant impacts on manufacturers other than final stage manufacturers. However, there are some potentially significant impacts on final stage manufacturers. This is discussed in detail in the PRE for this rulemaking. Interested persons are invited to review this section of the PRE.

National Environmental Policy Act

NHTSA has analyzed the environmental issues associated with air bags as part of its requirements for automatic crash protection in new cars (49 FR 28962; July 17, 1984) and light trucks and vans (56 FR 12472; March 26, 1991), and determined that the widespread introduction and use of air bags would not have a significant impact on the quality of human life. Based on those analyses, which were conducted pursuant to the National Environmental Policy Act, NHTSA has determined that a final rule adopting this proposal would likewise not have a significant impact on the quality of human life. A discussion related to the environmental issues associated with air bags can be found in Docket No. 74–14; Notice 36 (for passenger cars) and Docket No. 74–14; Notice 70 (for light trucks and vans).

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this proposed rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under OMB No.: 2127–0535; *Administration:* National Highway Traffic Safety Administration; *Title:* Production Reporting System for Air Bag Compliance (49 CFR part 585); *Need for Information:* To assess compliance with air bag phase-in requirements; *Proposed Use of Information;* To determine if manufacturers are complying with the air bag phase-in schedule; *Frequency:* Once only; *Burden Estimate:* 828 hours; *Respondents:* 23; *Form(s):* None; *Avergage Burden Hours for Respondent:* 36.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735, or Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Motor vehicles, Reporting and recordkeeping requirements. In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§571.208 [Amended]

2. S4.1.4 of Standard No. 208 would be revised to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989, but before September 1, 1996.*

* * * * *

3. S4.1.5 of Standard No. 208 would be amended by removing existing § 4.1.5 through § 4.1.5.2(d), inclusive, and substituting a revised § 4.1.5 through S4.1.5.3, to read as follows:

S4.1.5 *Passenger cars manufactured on or after September 1, 1996.*

S4.1.5.1 *Frontal/angular automatic protection system.*

(a) Each passenger car manufactured on or after September 1, 1996 shall:

(1) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1 by means that require no action by vehicle occupants;

(2) At any front designated seating positions that are not "outboard designated seating positions," as that term is defined at 49 CFR 571.3, and at any rear designated seating positions that are not "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 and S7.2 of this standard; and

(3) At each front designated seating position that is an "outboard designated seating position," as that term is defined at 49 CFR 571.3, and at each rear designated seating position that is a "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard, and, in the case of the Type 2 seat belt assemblies installed at the front outboard designated seating positions, meet the frontal crash protection requirements with the appropriate anthropomorphic test dummy restrained by the Type 2 seat belt assembly in addition to the means that requires no action by the vehicle occupant.

(b) For the purposes of this section, an *inflatable restraint system* means an air bag that is concealed in the steering wheel or the instrument panel until it is activated in a crash.

S4.1.5.2 *Passenger cars manufactured on or after September 1, 1996 and before September 1, 1997.*

S4.1.5.2.1 The amount of passenger cars complying with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position shall be not less than 95 percent of the manufacturer's total production of passenger cars manufactured on or after September 1, 1996, and before September 1, 1997. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.5.2.2 *Passenger cars produced by more than one manufacturer.*

S4.1.5.2.2.1 For the purpose of calculating the production of passenger cars by each manufacturer during the period specified in S4.1.5.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.1.5.2.2.2:

(a) A passenger car that is imported into the United States shall be attributed to the importer.

(b) A passenger car manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.1.5.2.2.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to Part 585 of this title, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.1.5.2.2.1.

S4.1.5.3 *Passenger cars manufactured on or after September 1, 1997.*

Each passenger car manufactured on or after September 1, 1997 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

4. S4.2.6 of Standard No. 208 would be amended by removing existing S4.2.6, and substituting a new S4.2.6 through S4.2.6.2, to read as follows:

S4.2.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, which is manufactured on or after September 1, 1997, shall comply with the requirements of S4.1.5.1 of this standard (as specified for passenger cars), except that walk-in van-type trucks and vehicles designed to be sold exclusively to the U.S. Postal Service may instead meet the requirements of S4.2.1.1 or S4.2.1.2 of this standard.

S4.2.6.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998.*

S4.2.6.1.1 The amount of trucks, buses, and multipurpose passenger vehicles complying with the requirement of S4.1.5.1(a)(1) of this standard by means of an inflatable restraint system shall be not less than 80 percent of the manufacturer's total combined production of subject vehicles manufactured on or after September 1, 1997 and before September 1, 1998. Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998, whose driver's seating position complies with S4.1.5.1(a)(1) by means of an inflatable restraint system and whose right front passenger's seating position is equipped with a manual Type 2 seat belt assembly that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2 of this standard, shall be counted as a vehicle complying with S4.1.5.1(a)(1) by means of an inflatable restraint system. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.6.1.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer.*

S4.2.6.1.2.1 For the purpose of calculating the production by each manufacturer during the period specified in S4.2.6.1.1, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.6.1.2.2:

(a) A vehicle that is imported into the United States shall be attributed to the importer.

(b) A vehicle manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.6.1.2.2 A truck, bus, or multipurpose passenger vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to Part 585 of this title, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.2.6.1.2.1.

S4.2.6.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998.*

Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

5. S4.5.1 of Standard No. 208 would be revised to read as follows:

S4.5 *Other general requirements.*

S4.5.1 *Labeling and owner's manual information.*

(a) *Air bag maintenance or replacement information.* If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capitals and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor. If some regular maintenance or replacement of the inflatable restraint system(s) in a vehicle is recommended by the vehicle manufacturer, the owner's manual shall also set forth the recommended schedule for maintenance or replacement.

(b) *Label on sun visor above front outboard seating position equipped with inflatable restraint system.* Each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. This label shall read:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(c) *Information to appear in owner's manual.* The owner's manual for any vehicle equipped with an inflatable restraint system shall include a description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and a lap/shoulder belt at one or both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information should emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the label identifying the air bag on the steering wheel and instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

* * * * *

6. A new S12 would be added to Standard No. 208 to read as follows:

S12. *Temporary Exemption from Requirement for Inflatable Restraint System.*

S12.1 *Scope.* This section establishes procedures for filing and processing applications for temporary exemption from the requirements in this standard that vehicles be equipped with inflatable restraint systems.

S12.2 *Definitions.*

"Line" means a name that a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon,

and hatchback vehicles of the same make.

S12.3 *Standard of review.* In order to receive a temporary exemption from the inflatable restraint requirement, a vehicle manufacturer must demonstrate in its application that there has been a disruption in the supply of one or more inflatable restraint system components, or a disruption in the use and installation by the manufacturer of any such component due to unavoidable events not under the control of the manufacturer, which will prevent a manufacturer from meeting its anticipated production volume of vehicles with inflatable restraint systems.

S12.4 *Exemption applications—General requirements.* Each application for a temporary exemption from the inflatable restraint requirements must—

(a) Be written in the English language;

(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(c) State the full name and address of the manufacturer, the nature of its organization (individual, partnership, corporation, etc.), and the name of the State or country under the laws of which it is organized;

(d) Identify the motor vehicle line or lines for which the temporary exemption is being sought;

(e) Set forth in full the data, views, and arguments of the manufacturer that would support granting the temporary exemption, including the specific information required by S12.5; and

(f) Specify and segregate any part of the information and data submitted in the application that should be withheld from public disclosure in accordance with Part 512 of this chapter.

S12.5 *Exemption applications—Specific content requirements.* Each application for a temporary exemption from the inflatable restraint requirement must include:

(a) A clear and specific identification of any component in the inflatable restraint system that has become unavailable due to circumstances beyond the manufacturer's control, and a diagram showing the location of such component within the restraint system and within the vehicle;

(b) A clear and specific explanation of the cause or causes of the disruption in the supply of the component, and a showing that such disruption is beyond the control of the manufacturer;

(c) An estimate of the length of time that will be needed to correct the disruption and again incorporate the subject components into current production;

(d) A complete statement of the bases for the manufacturer's belief that NHTSA should grant a temporary exemption in response to this application;

(e) An unconditional statement by the manufacturer that an inflatable restraint system will be installed in every vehicle at those seating positions for which a temporary exemption is requested in the application; and

(f) A proposed reasonable period of time after the disruption in the supply of inflatable restraint system components is corrected that the manufacturer estimates will ensure a sufficient quantity of components for both anticipated production and retrofit of those vehicles for which a temporary exemption is requested in the application, so that the vehicle manufacturer can recall those vehicles for which a temporary exemption is requested and install inflatable restraint systems in them, together with a demonstration of why the manufacturer believes this proposed period of time is reasonable for completing this recall.

S12.6 *Processing an application for a temporary exemption.*

(a) NHTSA will process any application for temporary exemption that contains the information specified in S12.4 and S12.5. If an application fails to provide the information specified in S12.4 and S12.5, NHTSA will not process the application, but will advise the manufacturer of the information that must be provided if the agency is to process the application.

(b) Notice of each application for temporary exemption shall be published in the **Federal Register.**

(c) NHTSA will issue its decision to grant or deny the requested temporary exemption not later than 60 days after the agency receives a complete petition, as defined in paragraph (a).

(d) Notice of each decision to grant or deny a temporary exemption, and the reasons for granting or denying it, will be published in the **Federal Register.** Such decisions will be the final agency action on those applications, so no petitions for reconsideration of such decisions will be processed or considered by the agency.

(e) Unless a later effective date is specified in a notice announcing an agency decision to grant a temporary exemption, a temporary exemption from the inflatable restraint requirement will become effective upon the date the decision is published in the **Federal Register.**

S12.7 *Labels and written notice announcing temporary exemption.*

S12.7.1 It shall be a condition of every temporary exemption from the inflatable restraint requirement that the manufacturer of exempted vehicles comply with the provisions of S12.7.2 and S12.7.3.

S12.7.2 (a) The manufacturer of any vehicle granted a temporary exemption from the inflatable restraint requirement shall affix a label within the passenger compartment of such vehicle. The label shall set forth the following information in block capital letters and numerals not less than three thirty-seconds of an inch high:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. (insert number assigned by NHTSA).

(b) This label shall not be removed until after the vehicle manufacturer has recalled the vehicle and installed an inflatable restraint system at those seating positions for which it was granted an exemption.

(c) Removal of the label by the manufacturer or any of its dealers or distributors shall constitute a certification that the vehicle complies in full with the inflatable restraint system requirement of this standard.

S12.7.3 The manufacturer of any vehicle that is delivered without an inflatable restraint system, pursuant to a temporary exemption granted under this section, shall, at the time of delivery of the vehicle, provide a written notice to the dealer to whom the vehicle is delivered and to the first purchaser of the vehicle for purposes other than resale. Such notice shall provide the following information:

(a) This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).

(b) The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).

(c) The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the manufacturer's control.

(d) The manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.

(e) If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

* * * * *

PART 585—[AMENDED]

7. The authority citation for Part 585 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

8. Section 585.1 would be revised to read as follows:

§ 585.1 Scope.

This part establishes requirements for manufacturers of passenger cars to submit reports, and to maintain records related to the reports, concerning the number of cars equipped with inflatable restraint systems in compliance with the requirement of S4.1.5.2 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This part also establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208 and the number of such vehicles equipped with inflatable restraint systems in compliance with the requirement of S4.2.6.1 of Standard No. 208.

9. Section 585.2 would be revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a vehicle manufacturer has complied with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production and to install an inflatable restraint system that provides automatic crash protection in a specified percentage of the manufacturer's annual production.

10. Section 585.3 would be revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars and to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

11. Section 585.5 would be revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements—Passenger cars.* Within 60 days after the end of the production year ending August 31, 1997, each manufacturer that manufactured any passenger cars for sale in the United States shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirement of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 95 percent of its cars manufactured during that production year.

(b) *General reporting requirements—Light trucks, buses, and multipurpose passenger vehicles.*

(1) *Automatic crash protection.* Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31, 1997, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i) Vehicles manufactured in two or more stages;

(ii) Walk-in van-type trucks;

(iii) Vehicles designed to be sold exclusively to the U.S. Postal Service; and/or

(iv) Vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) *Inflatable restraint system that provides automatic crash protection.* Within 60 days after the end of the production year ending August 31, 1998, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 80 percent of such vehicles manufactured during that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i)Walk-in van-type trucks; and/or

(ii) Vehicles designed to be sold exclusively to the U.S. Postal Service.

(c) Each report submitted in compliance with paragraphs (a), (b)(1), or (b)(2) of this section shall:

(1) Identify the manufacturer;

(2) State the full name, address, and title of the official responsible for preparing the report:

(3) Identify the production year for which the report is filed;

(4) Provide the information specified in paragraph (d) of this section;

(5) Be written in the English language;

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; and

(7)(i) In the case of a report filed pursuant to paragraph (a) of this section, expressly state whether the manufacturer has complied with the requirement of S4.1.5.2 of Standard No. 208 (§ 571.208 of this chapter);

(ii) In the case of a report filed pursuant to paragraph (b)(1) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter); and

(iii) In the case of a report filed pursuant to paragraph (b)(2) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.6.1 of Standard No. 208 (§ 571.208 of this chapter).

(d) *Report content.*

(1) *Passenger cars.*

(i) *Basis for phase-in production goals.* Each manufacturer shall report the total number of passenger cars it manufactured for sale in the United States for the production year ending August 31, 1997.

(ii) *Production.* Each manufacturer shall report the number of passenger cars manufactured for sale in the United States for the production year ending August 31, 1997 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection at both the driver's and the right front passenger's seating position.

(iii) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is

affected by one or more of the express written contracts permitted by S4.1.5.2.2 of § 571.208 of this chapter shall:

(A) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(B) Report the number of cars covered by each such contract.

(2) *Trucks, buses, and multipurpose passenger vehicles.*

(i) *Automatic crash protection.*

(A) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years, or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during each of the three preceding production years must report the number of trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less it manufactured during the production year for which the report is filed. However, manufacturers are not required to report any information with respect to those vehicles that are manufactured in two or more stages, walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, and/or vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(B) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (d)(2)(i)(B)(*1*) through (d)(2)(i)(B)(*3*) of this section, inclusive, with respect to its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(*1*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with automatic seat belts and the seating positions at which those belts are installed;

(*2*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(*3*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(C) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.5.6.2 of § 571.208 of this chapter shall:

(*1*) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(*2*) Report the number of vehicles covered by each such contract.

(ii) *Inflatable restraint system that provides automatic crash protection.*

(A) *Basis for phase-in production goals.* Each manufacturer shall report the total number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for the production year ending August 31, 1998. However, manufacturers are not required to report any information with respect to those vehicles that are walk-in van-type trucks, and/or vehicles designed to be sold exclusively to the U.S. Postal Service.

(B) *Production.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds that it manufactured for sale in the United States for the production year ending August 31, 1998 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection.

(C) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.6.1.2 of § 571.208 of this chapter shall:

(*1*) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(*2*) Report the number of vehicles covered by each such contract.

12. Section 585.6 would be revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5 until December 31, 1999.

Issued on December 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–30213 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Ten Plants and Threatened Status for Two Plants From Serpentine Habitats in the San Francisco Bay Region of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for 10 plants: *Castilleja neglecta* (Tiburon paintbrush), *Ceanothus ferrisae* (coyote ceanothus), *Cirsium fontinale* var. *fontinale* (fountain thistle), *Clarkia franciscana* (Presidio clarkia), *Cordylanthus tenuis* ssp. *capillaris* (Pennell's bird's beak), *Dudleya setchellii* (Santa Clara Valley dudleys), *Eriophyllum latilobum* (San Mateo woolly sunflower), *Pentachaeta bellidiflora* (white-rayed pentachaeta), *Streptanthus albidus* ssp. *albidus* (Metcalf Canyon jewelflower), and *Streptanthus niger* (Tiburon jewelflower). The Service also proposes threatened status for two plants, *Calochortus tiburonensis* (Tiburon mariposa lily) and *Hesperolinon congestum* (Marin dwarf-flax). These species are restricted to serpentine soil outcrops in the area near the San

Francisco Bay, California. The 12 plants have been affected variously and are threatened by one or more of the following: Urbanization, pedestrian and off-road vehicular traffic, the invasion of alien plants, road maintenance, soil erosion and slipping, unauthorized dumping, livestock grazing, seed predation by beetles, and stochastic extinction by virtue of the small isolated nature of the remaining populations. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 12, 1993. Public hearing requests must be received by January 28, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanine L. Hardison at 916/978–4866 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Cordylanthus tenuis ssp. *capillaris*, *Calochortus tiburonensis*, *Castilleja neglecta*, *Streptanthus, niger*, *Clarkia franciscana*, *Cirsium fontinale* var. *fontinale*, *Eriophyllum latilobum*, *Hesperolinon congestum*, *Pentachaeta bellidiflora*, *Ceanothus ferrisae*, *Dudleya setchellii*, and *Streptanthus albidus* ssp. *albidus* are endemic to serpentine soils in the region of the San Francisco Bay in California. Serpentine soils are derived from ultramafic rocks such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California, to British Columbia. The chief constituent of the parent rock is some variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock, and are therefore shallow, rocky, and highly erodible. Serpentine soils also, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). These characteristics make serpentine soil inhospitable for the growth of most plants. Nevertheless, some plants have adapted to the rigors of life on serpentine soils. In fact, serpentine soils often support a high diversity of plants, including many rare species (McCarten 1988). Over 200 taxa in California are endemic (restricted) to serpentine soils (Kruckeberg 1984).

Serpentine soils in the San Francisco Bay region are derived from intrusive igneous rocks associated with fault zones in the sedimentary Franciscan formation. Outcrops occur south of the Bay in the Coyote Valley of Santa Clara County; west of the Bay at Edgewood County Park, near Crystal Springs Reservoir, and at Stanford University's Jasper Ridge Preserve in San Mateo County, and at the Presidio in San Francisco County; east of the Bay in the Oakland hills of Alameda County and at Mt. Diablo in Contra Costa County; and north of the Bay on the Tiburon Peninsula in eastern Marin County and at Mt. Tamalpais, Carson Ridge, and near Nicasio Reservoir in western Marin County, as well as in Sonoma and Napa Counties.

Serpentine soils are variable in soil chemistry, texture, and water availability, both within and between sites (McCarten 1987b). This variability and the variety of micro-climates in the San Francisco Bay region have a profound effect upon the local flora and vegetation. Several serpentine plant communities are found in the San Francisco Bay region (McCarten 1987b). Grassland and annual forb communities (serpentine bunchgrass grassland and serpentine wildflower field) tend to occur on level ground or on gentle slopes with soils to 1 meter (m) (3 feet (ft)) or more in depth. Shrub communities (Franciscan serpentine coastal scrub, mixed serpentine chaparral, and Sargent cypress woodlands) tend to occur on steep rocky slopes with shallow soils. In some areas, soil development is minimal and parent rock is extensively exposed. These serpentine barrens support a distinctive community composed of only a few species, usually growing at low densities. Another unique habitat on serpentine soils occurs near seasonal springs and seeps, which support species requiring moist soil. Most of the 12 species proposed in this rule occur in the serpentine bunchgrass grassland and serpentine wildflower field communities. *Cirsium fontinale* var. *fontinale* occurs in serpentine seep areas. *Cordylanthus tenuis* ssp. *capillaris* and *Ceanothus ferrisae* occur in chaparral, as do a few populations of *Hesperolinon congestum*. *Dudleya setchellii* and *Streptanthus albidus* ssp. *albidus* are found on serpentine barrens. *Eriophyllum latilobum* grows on serpentine-influenced soil in the coast live oak woodland community.

Serpentine endemics may have limited or widespread distributions. Some species are restricted to a single outcrop; others occur on serpentine soils within a particular region; a few species occur throughout almost the entire range of serpentine soils in California (Kruckeberg 1984). Of the taxa proposed in this rule, one (*Calochortus tiburonensis*) is thought to always have been restricted to the single outcrop on which it occurs. Others, including *Cordylanthus tenuis* ssp. *capillaris*, *Streptanthus niger*, *Eriophyllum latilobum*, *Dudleya setchellii*, and *Streptanthus albidus*, ssp. *albidus*, have a known historical range of only a few miles or less. The widest ranging species in historic times was *Pentachaeta bellidiflora*, which occurred from Marin County to Santa Cruz County. It is now restricted to a single population as a result of habitat destruction.

The human population of the San Francisco Bay region has grown rapidly over the last several decades. Urban development (including highway construction) has reduced the amount of serpentine habitat by nearly 20 percent in the past 20 years (McCarten 1987b). The construction of roads, houses, recreational facilities, and waste disposal sites continues. The increasing numbers of people also place an ever greater strain on undeveloped wildlands, through activities such as pedestrian and off-road vehicle traffic, unauthorized garbage dumping, and changes in the pattern of wildland fires. Serpentine habitats, because of their often limited vegetative cover, may appear to the uninitiated as unoccupied space, and so they are especially likely to be subject to disturbances. Recreational activities may directly impact plants; or may result in increased erosion and facilitate the invasion of alien species including many introduced annual grasses common in California. Competition with introduced species is a serious threat to serpentine natives (McCarten 1987b). The destruction of serpentine habitats due to urban development has also increased the fragmentation of rare plant populations, thus increasing the risks of extinction due to chance events such as fire, pest or disease outbreaks, reproductive failure, or other natural or human-caused disaster.

The land that supports these 12 taxa is owned by cities and counties, State and Federal agencies, parks, two water districts and private parties.

Discussion of the Twelve Species Proposed for Listing

North Bay Species

Cordylanthus tenuis ssp. *capillaris* (Pennell's bird's beak) was collected by Herbert Mason about 3 kilometers (km) (2 miles) north of Occidental in Sonoma County, California, in 1946. Francis Whittier Pennell described the plant as *Cordylanthus capillaris* in 1950, using Mason's specimen as the type (Pennell 1950). Pennell was misled by an erroneous label to think that the plants had been collected in Merced County (Bacigalupi 1966), which may have affected his treatment of the taxon (Chuang and Heckard 1986). Artificial hybridization studies of *C. brunneus* and *C. capillaris* (Chuang and Heckard 1975) showed a close relationship between the two plants. The name *C. brunneus* ssp. *capillaris* was proposed for *C. capillaris* by Chuang and Heckard (Heckard 1977) but was never formally published. In 1986 Chuang and Heckard published a revision of the genus, in which both *C. brunneus* and *C. capillaris* were treated as subspecies of *C. tenuis* (Chuang and Heckard 1986).

Cordylanthus tenuis ssp. *capillaris* is a branching herbaceous annual of the snapdragon family (Scrophulariaceae). The plant grows 30–40 centimeters (cm) (12–16 inches (in)) tall, with yellow-green hairless herbage that becomes purplish with age. The leaves are entire, or those of the primary stem three-parted, and threadlike. The floral bracts are three-parted up to two-thirds of their length, with fine marginal hairs on bracts and calyx. The tubular corolla is 1.5 cm (0.6 in) long, and garnet-brown laterally, paler dorsally. Each capsule contains 10–16 seeds. The three-lobed outer bracts of *Cordylanthus tenuis* ssp. *capillaris* distinguish it from its nearest relative (*C. tenuis* ssp. *brunneus*) and from *C. pilosus*, another *Cordylanthus* found in the area. A further distinguishing character is that *C. pilosus* is densely hairy throughout.

Cordylanthus tenuis ssp. *capillaris* is known only from two locations: the type locality in western Sonoma County and a second occurrence a few miles to the west. A third population may occur on property adjacent to the second location, but permission for botanical surveys on that property has been consistently refused (Betty Guggolz, Milo Baker Chapter, California Native Plant Society, pers. comm., 1992). The total number of plants fluctuates from year to year, as is typical of annual plants. *C. tenuis* ssp. *capillaris* is threatened with potential residential development, garbage dumping, and roadside maintenance.

Calochortus tiburonensis (Tiburon mariposa lily) was discovered in 1971 by Robert West on Ring Mountain on the Tiburon Peninsula in Marin County, California. Albert Hill collected the type specimen on Ring Mountain the following year, and published the description in 1973 (Hill 1973).

Calochortus tiburonensis is a bulbous perennial of the lily family (Liliaceae) with a single persistent, basal, linear-oblong leaf 30–60 cm (1–2 ft) long. The flowering stem, about 50 cm (20 in) tall, is usually branched and bears erect flowers in twos or threes at the ends of the branches. The three petals and three sepals are light yellow-green with reddish or purplish-brown markings. The capsule is triangular in cross-section, and about 4 cm (2 in) long. The long slender hairs on the upper surface and margins of the petals and the lack of wings on the capsule distinguish *Calochortus triburonensis* from the other two *Calochortus* species found on the Tiburon Peninsula, *C. umbellatus* and *C. luteus*.

Calochortus tiburonensis is known only from its type locality, where it grows on rocky serpentine slopes among annual and perennial herbs and grasses. The population, estimated at 40,000 individuals in 1991 (Larry Serpa, The Nature Conservancy, pers. comm., 1992), occurs on land which has been owned and managed by The Nature Conservancy since 1982. The occurrence of this plant in a single population and its proximity to human population centers and intensive development activities renders it vulnerable to catastrophic events such as fire, disease or pest outbreak, severe drought, or other natural or human-caused disasters.

The type specimen of *Castilleja neglecta* (Tiburon paintbrush) was collected by Katherine Brandegee in the early 1900s. The plant was described by Zeile (1925) in Willis Jepson's *Manual of the Flowering Plants of California*.

Castilleja neglecta is a semi-woody perennial of the snapdragon family (Scrophulariaceae), with erect, branched stems 30–60 cm (1–2 ft) tall and a sparse covering of soft, spreading hairs. The lance-shaped leaves have one or two pairs of narrow lobes. The conspicuous floral bracts are yellowish and sometimes red-tipped; the flowers are yellow to red and 18–20 millimeters (mm) (0.7–0.8 in) long. The simple (unbranched) hairs and the lack of glands below the inflorescence distinguish *C. neglecta* from other species of *Castilleja* on the Tiburon Peninsula (*C. latifolia* var. *rubra* and *C. foliosa*) (Howell 1970).

Castilleja neglecta occurs in serpentine bunchgrass communities on north to west facing slopes. It is known from four populations in Marin County, three of which occur on the Tiburon Peninsula, and one population in Napa County. The range of this plant is approximately 50 km (30 miles) from east to west, and 35 km (22 miles) from north to south. Population sizes are small, ranging from 50 plants at a location in western Marin County (Martin 1991) to 600 plants at Ring Mountain Preserve on the Tiburon Peninsula (Hunter 1989a). A total of approximately 1,500 plants exist. The Marin County populations are threatened by residential development, foot traffic, grazing, and soil slumping; the Napa County population is threatened by gravel mining and grazing.

Streptanthus niger (Tiburon jewelflower) was described by Edward L. Greene, who cited as the type a specimen he had collected at St. Hilary's Church in the town of Tiburon in Marin County (Greene 1886a). Greene later redefined the limits of *Euclisia*, formerly a subgenus of *Streptanthus*, treating it as a genus in its own right (Greene 1904). *Streptanthus niger*, as a member of the *Euclisia* group, was thus referred to as *Euclisia niger*. Jepson (1925) returned *Euclisia* to subsection status, and later authors followed his treatment. Munz treated *S. niger* as a subspecies of *S. glandulosus* in *A California Flora* (1959), and then returned it to *S. niger* in his supplement (1968), following Kruckeberg (1958).

Streptanthus niger is an annual herb of the mustard family (Brassicaceae) that reaches 30–60 cm (1–2 ft) in height. The lower leaves are toothed, the upper leaves less toothed or not at all. The sepals are a very dark purple; the petals have a purple claw and a white blade with a purple midvein. The zig-zag inflorescence pattern and the lack of hairs distinguish *S. niger* from its near relative *S. glandulosus*.

Streptanthus niger is found on shallow rocky serpentine soils on southwest-facing slopes on the Tiburon Peninsula of Marin County. Two populations are known from the southern end of the peninsula where they occur within 3 km (2 miles) of one another. Populations number from 50 to 2,000 plants (Hunter 1989b; Andrew Allen, Belvedere-Tiburon Landmarks Society, *in litt.*, 1991). The plant is threatened by residential development, foot traffic, and road construction.

Central Bay Species

The type specimen of *Clarkia franciscana* (Presidio clarkia) was

collected by Peter Raven in 1956. *C. franciscana* was described by Harlan Lewis and Peter Raven (1958).

Clarkia franciscana is a slender, erect, herbaceous annual of the evening-primrose family (Onagraceae) to 40 cm (16 in) tall with few, very small and narrow leaves. The lavender-pink petals have a lighter basal portion and a reddish-purple basal spot. The slender capsule is 2–4 cm (1–2 in) long. *Clarkia franciscana* can be distinguished from *Clarkia rubicunda*, a related species which may occur in the same area, by the fact that its petals have irregular teeth on the apical margin (*C. rubicunda* has petals that are rounded at the apex).

Clarkia franciscana is restricted to serpentine soils in grassland communities in San Francisco and Alameda Counties. Two populations are known from the Presidio in San Francisco. Three populations are known from the Oakland Hills in Alameda County, 27 km (17 miles) east of San Francisco, and all from within 0.6 miles of each other. A fourth population in the Oakland Hills was reported in 1988 (California Department of Fish and Game, Natural Diversity Data Base), but could not be relocated in a search conducted in 1991 (David Bigham, East Bay Chapter, California Native Plant Society, *in litt.*, 1991). Population sizes fluctuate greatly; the upper limit to the total numbers of plants reported in recent years is approximately 8,000 plants. The first of the Alameda County populations was discovered in 1980 at the Redwood Regional Park. Because this discovery occurred so long after the original discovery of the plant, and because this population was relatively far from the previously known population at the Presidio, it was suggested that this population might not be a natural occurrence. This suggestion gained credence from the fact that seed collected from the type location in 1964 had been sown in the East Bay Regional Parks Tilden Botanic Garden and plants grown there for several years (Roof 1971). Seed collected from plants at the botanic garden had been sown in several sites at the Presidio in 1972 (Roof 1972). It was thought that seed might also have been sown at Redwood Regional Park in Alameda County. However, an electrophoretic comparison of the San Francisco and Alameda populations "strongly suggests that the Oakland Hills population did not originate by seed transfer from San Francisco, and that it must be regarded as indigenous to its present locality" (Gottlieb and Edwards 1992). *C. franciscana* is threatened by potential development, roadside maintenance, foot traffic, mowing, competition from alien plants, and shade from native and introduced shrubs and trees.

Cirsium fontinale var. *fontinale* (fountain thistle) was first described as *Cnicus fontinalis* (Greene 1886b). In 1892 Greene reassigned the plant to the genus *Carduus* (Greene 1892). Willis Jepson, in his *Flora of Western Middle California* (1901), put the taxon in the genus *Cirsium*. In 1938 John Thomas Howell described a close relative of the fountain thistle, *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle) (Howell 1938). According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into infraspecific taxa, a "type" variety is automatically created. In this case, the type variety is *C. fontinale* var. *fontinale*.

Cirsium fontinale var. *fontinale* is an herbaceous perennial of the aster family (Asteraceae) with several stout, erect reddish stems 30–60 cm (1–2 ft) high. The basal leaves are 10–20 cm (4–8 in) long with spine-tipped lobes; the leaves on the stems are smaller. The flowers are dull white to pinkish, becoming brown with age. The egg-shaped, recurved bracts beneath the flower head distinguish *Cirsium fontinale* var. *fontinale* from the most similar thistle in the area, brownie thistle (*Cirsium quercetorum*). The nearest relative of *C. fontinale* var. *fontinale*, *Cirsium fontinale* var. *obispoense*, is found further south, in San Luis Obispo County.

Cirsium fontinale var. *fontinale* is restricted to perpetually moist clay openings in riparian or serpentine chaparral. Historically, this plant occurred in both San Mateo and Santa Clara Counties, but it is now found in only three locations in San Mateo County. One population of 1,000–2,800 plants occurs east of Crystal Springs Reservoir, on both sides of Interstate 280. A second population of 100–200 plants occurs 10 km (6 miles) to the south in the "Triangle area," a triangular piece of land west of Edgewood County Park, which is bounded by Interstate 280 to the east, Edgewood Road on the north, and Canada Road on the west. A single plant was found in Edgewood County Park in 1987. In 1992, there was still only one plant in this location (Susan Sommers, Santa Clara Valley Chapter, California Native Plant Society, pers. comm., 1992). The taxon is threatened by proposed recreational development, competition with alien plant species, garbage dumping, and roadside maintenance.

Eriophyllum latilobum (San Mateo woolly sunflower) was first collected by Elmer in 1903. The type specimen was collected by A.A. Heller in 1907. The plant was described by Per Axel Rydberg (1915). *E. latilobum* is believed to have originated as a hybrid between *E. confertiflorum* and *E. lanatum* var. *arachnoideum* (Munz 1959; John Mooring, Santa Clara University, pers. comm. 1992).

Eriophyllum latilobum is a bushy perennial of the aster family (Asteraceae) with leafy stems 30–40 cm (12–16 in) high. The upper surfaces of the deeply three-cleft leaves are a smooth dark green and the lower surfaces are covered with densely interwoven white hairs. The golden flower heads are borne in loose clusters. *E. latilobum* differs from *E. confertiflorum* in having eight ray flowers rather than five, large flower heads, and a more open inflorescence. *E. lanatum* var. *arachnoideum* differs from the other two species in having 13 ray flowers and shallowly cleft leaves.

Eriophyllum latilobum is found in shaded moist sites on steep grassy or sparsely wooded slopes of serpentine-influenced soil. The single remaining occurrence of *E. latilobum* consists of a few hundred plants scattered along 4 km (2.5 miles) of Crystal Springs Road in San Mateo County. These subpopulations are probably the fragments of a once-continuous population. *E. latilobum* has also been reported from southern San Mateo County, on Pescadero Road southwest of La Honda, but this report is most likely erroneous. At least one of the specimens collected at this site (in 1929) is actually *Eriophyllum confertiflorum* (Barry Prigge, University of California, Los Angeles herbarium, pers. comm., 1992), and searches in recent years have found only *Eriophyllum confertiflorum* (Toni Corelli, Santa Clara Valley Chapter, California Native Plant Society, pers. comm., 1992). The plant is threatened by erosion and soil slippage, road maintenance, garbage dumping, and recreational development.

The type specimen of *Hesperolinon congestum* (Marin dwarf-flax) was collected in Marin County by Henry Nicholas Bolander in 1863, while working on the State Geological Survey. Asa Gray described the new species as *Linum congestum*, including it in the section *Hesperolinon* which he described in the same paper (Gray 1865). J.K. Small (1907) established *Hesperolinon* as a distinct genus in 1907. Jepson (1925) treated *Hesperolinon* as a section of the genus *Linum*, and treated *H. congestum* as a subspecies of *L. californicum*. Helen K. Sharsmith (1961) conducted an extensive study of *Hesperolinon* and concluded that it definitely warrants

distinction as a separate genus. She also returned *H. congestum* to the status of a species.

Hesperolinon congestum is an herbaceous annual of the flax family (Linaceae) with slender, threadlike stems, 10–40 cm (4–16 in) tall. The leaves are linear. The flowers are borne in congested clusters; the pedicels are 0.2–2 mm (.01–.08 in) long. The sepals are hairy and the five petals are rose to whitish. The anthers are deep pink to purple; this character helps distinguish *H. congestum* from *H. californicum*, found in the same geographic area, which has white to rose anthers, as well as hairless sepals. Two other species that are found in the same region are *H. micranthum* and *H. spergulinum*. They differ from *H. congestum* in having hairless sepals and a long, open inflorescence, with pedicels 2–25 mm (.08–1 in) long.

Hesperolinon congestum is endemic to serpentine soils from Marin County south to San Mateo County, a range of 80 km (50 miles). Two populations are found in serpentine chaparral; the others occur in serpentine bunchgrass habitat. There are six populations known from Marin County, one from San Francisco County, and seven from San Mateo County. Populations fluctuate in size from hundreds to thousands of plants (Robison and Morey 1992a). The species is threatened with residential and recreational development, foot traffic, and competition from alien species.

Pentachaeta bellidiflora (white-rayed pentachaeta) was first collected in 1853–54 near Corte Madera by John Milton Bigelow, surgeon and botanist for a railway route exploration (Van Horn 1973). The plant was described as *Pentachaeta bellidiflora* (Greene 1885). Keck (1958) transferred the entire genus to *Chaetopappa*. Van Horn (1973) studied *Chaetopappa* and *Pentachaeta* and concluded that the two genera are not closely related. Based on differences in floral and vegetative morphology and chromosome number, Van Horn reinstated the genus *Pentachaeta*.

Pentachaeta bellidiflora is a small annual plant of the aster family (Asteraceae) with one or a few branches that bear narrow, linear leaves. Each flower head has numerous yellow disk florets and 5 to 16 white to purplish ray florets. The fruits are tawny, coarse-haired achenes (dry one-seeded fruits). Related species in the San Francisco Bay area (*P. exilis* ssp. *exilis* and *P. alsinoides*) differ from *P. bellidiflora* in that they have no ray flowers.

Pentachaeta bellidiflora is known only from one location, in a serpentine bunchgrass community in San Mateo County. Historically, *P. bellidiflora* was known from at least nine sites in Marin, San Mateo, and Santa Cruz Counties. The other populations have been destroyed by urbanization, off-road vehicles, or highway construction over the past 50 years (Robison and Morey 1992b). As is common among annual plants, the size of this population fluctuates dramatically from year to year. Numbers have ranged from 10,000 to just under 100 million in the last 10 years, with about 1.5 million plants growing in each of the last 2 years (Zoe Chandik, Santa Clara Valley Chapter, California Native Plant Society, pers. comm., 1992). The species is threatened by recreational development.

South Bay Species

Ceanothus ferrisae (coyote ceanothus) was collected in 1917 by LeRoy Abrams, professor of botany at Stanford Univerity, on Madrone Springs Road above Coyote Creek, in Santa Clara County. The species was described in 1933 by Howard E. McMinn (McMinn 1933), professor of botany at Mills College and author of *An Illustrated Manual of California Shrubs*.

Ceanothus ferrisae is an erect evergreen shrub of the buckthorn family (Rhamnaceae) that grows 1–2 m (3–6 ft) high, with long stiff divergent branches. Its round leaves are dark green and hairless on the upper surface, lighter green with minute hairs below. The leaf margins have short teeth or sometimes no teeth at all; the leaf base is abruptly tapering or rounded. The small white flowers are borne in clusters 1.3–2.5 cm (0.5–1 in) long. The seed capsules are 7–9 mm (.3–.35 in) in width and have three conspicuous apical horns. The related *C. cuneatus* has entire leaves with wedge-shaped (not rounded) bases and seed capsules only 5–6 mm (.2 in) wide.

Ceanothus ferrisae grows on dry slopes in serpentine chaparral. It is known from only three locations, all within 6 km (4 miles) of each other, in Santa Clara County. Fewer than 6,000 plants are known to exist. It was thought at one time to occur in both San Mateo and Santa Cruz Counties as well, but these reports have been found to be erroneous (Corelli 1991). The existing populations are threatened by residential and recreational development and unauthorized dumping.

The type specimen of *Dudleya setchellii* (Santa Clara Valley dudleya) was collected by Willis L. Jepson in 1896 on Tulare Hill in Santa Clara County. He described it as *Cotyledon laxa* var. *setchellii* (Jepson 1901). At the same time, he described *Cotyledon caespitosa* var. *paniculata*, which he had collected from Morrison Canyon near what is now Fremont. Britton and Rose (1903) elevated both taxa to full species and transferred them to the newly-created genus *Dudleya*. Subsequently, *Dudleya setchellii* was variously treated as *Cotyledon setchellii* (Fedde 1904), *Echeveria setchellii (Nelson and Macbride 1913), and Echeveria laxa* var. *setchellii* (Jepson 1936). Reid Moran (1959) combined the material referred to as *Dudleya setchellii* and *D. paniculata* in *D. cymosa* ssp. *setchellii*. Kei Nakai (1987) separated the two entities into *D. cymosa* ssp. *paniculata* and *D. cymosa* ssp. *setchellii* on the basis of leaf shape, inflorescence branching patterns, and pedicel length. Jim Bartel contends that *D. setchellii* should not be placed within *D. cymosa*, and is in fact intermediate to *D. cymosa* and *D. abramsii* (Jim Bartel, U.S. Fish and Wildlife Service, pers. comm., 1992). His forthcoming treatment of *Dudleya* retains Nakai's *D. cymosa* ssp. *paniculata* and resurrects Britton and Rose's *D. setchellii* for the Santa Clara Valley dudleya (Bartel in press).

Dudleya setchellii is a low-growing perennial of the stonecrop family (Crassulaceae) with fleshy, glabrous leaves. The oblong to triangular, slightly glaucous leaves are 3–8 cm (1–3 in) long and 7–15 mm (0.3–0.6 in) wide. Two or three flowering stems ascend to heights of 5–20 cm (2–8 in) in mid to late spring. The pale yellow petals are 8–13 mm (0.3–0.5 in) long. There are two related species in the area. *D. cymosa* ssp. *cymosa* has bright yellow to red petals rather than pale yellow, and is therefore easily distinguished from *D. setchellii* with its pale yellow flowers. *D. cymosa* ssp. *paniculata* can be distinguished from *D. setchellii* by its oblong to oblanceolate leaves (in contrast to the oblong-triangular leaves of *D. setchellii*), its greater degree of rebranching of the inflorescence branches, and its longer pedicels.

Dudleya setchellii is restricted to rocky outcrops within serpentine grasslands in Santa Clara County. It is found only in the Coyote Valley area, from San Jose south about 30 km (20 miles) to San Martin, at elevations of 100–300 m (300–900 ft). *D. cymosa* ssp. *paniculata* ranges from Contra Costa County to Fresno and Monterey Counties; the reports of Moran's combination *D. cymosa* ssp. *setchellii* from Alameda, Contra Costa, and San Benito Counties (Munz 1959, Olson and Lake 1991) reflect the distribution of *D. cymosa* ssp. *paniculata* and do not refer to *D. setchellii* as now recognized. Fourteen sites and a total of 12,000–13,000 plants are known to exist. The

plant is threatened by development, unauthorized dumping, and off-road vehicles.

Streptanthus albidus ssp. *albidus* (Metcalf Canyon jewelflower) was first collected in 1887 by Volney Rattan, a botany teacher and author of an early California flora, from hillsides a few miles south of San Jose. Edward Greene described *S. albidus* ssp. *albidus* in 1887 (Greene 1887); later he redefined the limits of *Euclisia*, formerly a subgenus of *Streptanthus*, treating it as a genus in its own right (Greene 1904). *S. albidus* ssp. *albidus*, as a member of the *Euclisia* group, was included in this change. Jepson (1925) returned *Euclisia* to subsection status, and later authors followed his treatment. Jepson (1925) also treated *S. albidus* ssp. *albidus* as a subspecies of *S. glandulosus*. Kruckeberg published a revision of the *Streptanthus glandulosus* complex in which he recognized the close relationships among *S. glandulosus*, *S. albidus*, and *S. niger* (Kruckeberg 1958). In this paper he notes that the "sharp genetic discontinuity between *S. albidus* and all other populations, coupled with the morphological distinctness and regional restriction of *S. albidus* warrant the restoration of this Greeneian species." He recognized two subspecies: *S. albidus* ssp. *albidus* and *S. albidus* ssp. *peramoenus* (Kruckeberg 1958).

Streptanthus albidus ssp. *albidus* is an annual herb of the mustard family (Brassicaceae) that reaches up to 1 m (3 ft) in height. It has bristly hairs at the base, and pale green, strongly glaucous stem and leaves. The flowers are borne in leafless terminal racemes. The upper three of the white to yellow to whitish-green sepals are fused, with the lower (fourth) sepal free and spreading. The four petals, 8-11 mm (.3–.4 in) long, are whitish with light purple veins. The erect flattened pods are 3–8 cm (1–3 in) long. The only *Streptanthus* species likely to co-occur with *S. albidus* ssp. *albidus* is its close relative *Streptanthus albidus* ssp. *peramoenus*. *S. albidus* ssp. *peramoenus* is distinguished by its dark purple sepals.

Streptanthus albidus ssp. *albidus* has always been rare. It is endemic to serpentine outcrops with little soil development. It can be locally abundant, but its range is limited, extending less than 30 km (20 miles) from San Jose south to Anderson Lake, which lies northeast of Morgan Hill. Furthermore, the serpentine outcrops on which *S. albidus* ssp. *albidus* occurs are patchily distributed and comprise only a small percentage of the area within its range. Nine populations and a total of 20,000–25,000 plants have been recorded (McCarten 1992b). The plant is threatened by urbanization and off-road vehicles.

Previous Federal Action

Federal government actions on the 12 plants began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Cordylanthus tenuis* ssp. *capillaris* (listed as *Cordylanthus brunneus* ssp. *capillaris*), *Calochortus tiburonensis*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* as endangered species and *Castilleja neglecta* and *Eriophyllum latilobum* as threatened taxa. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above 10 taxa were included in the July 1, 1975, notice. As a result of that review, on July 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Calochortus tiburonensis*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris* (listed as *Cordylanthus brunneus* ssp. *capillaris*), *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* were included in the June 16, 1976, **Federal Register** document.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Calochortus tiburonensis*, *Castilleja neglecta*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Hesperolinon congestum*, *Pentachaeta bellidiflora*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* as category 1 candidates for Federal listing, and *Eriophyllum latilobum* as a category 2 candidate. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 39526). This supplement changed *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Pentachaeta bellidiflora*, and *Streptanthus albidus* ssp. *albidus* from category 1 to category 2 candidates.

The plant notice was again revised on September 27, 1985 (50 FR 39526). *Calochortus tiburonensis*, *Castilleja neglecta*, *Clarkia franciscana*, *Eriophyllum latilobum*, *Hesperolinon congestum*, and *Streptanthus niger* were included as category 1 candidates; *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Cordylanthus tenuis* ssp. *capillaris*, *Pentachaeta bellidiflora*, and *Streptanthus albidus* ssp. *albidus* were included as category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision, *Castilleja neglecta*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Dudleya setchellii*, *Eriophyllum latilobum*, *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* were included as category 1 candidates; *Calochortus tiburonensis* and *Pentachaeta bellidiflora* were included as category 2 candidates. Since the publication of that notice, additional information was received on *Pentachaeta bellidiflora* that elevated it to category 1 status. The Service also re-evaluated the information available for *Calochortus tiburonensis* and elevated it to category 1 status. The Service

therefore believes that sufficient information is now available to support the proposed listing of these two species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Calochortus tiburonensis*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Hesperolinon congestum*, *Streptanthus albidus* ssp. *albidus*, *Streptanthus niger*, *Castilleja neglecta*, and *Eriophyllum latilobum*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(c)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of this proposal constitutes the final finding for the petitioned action. There are no pending petitions for *Pentachaeta bellidiflora* or *Dudleya setechellii*.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened and endangered species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Calochortus tiburonensis* Hill (Tiburon mariposa lily), *Castilleja neglecta* Zeile (Tiburon paintbrush), *Ceanothus ferrisae* McMinn (coyote ceanothus), *Cirsium fontinale* Jeps. var. *fontinale* (fountain thistle), *Clarkia franciscana* Lewis and Raven (Presidio clarkia), *Cordylanthus tenuis* Gray ssp. *capillaris* (Penn.) Chuang and Heck. (Pennell's bird's beak), *Dudleya setchellii* (Santa Clara Valley dudleya), *Eriophyllum latilobum* Rydb. (San Mateo woolly sunflower), *Hesperolinon congestum* (A. Gray) Small (Marin dwarf-flax), *Pentachaeta bellidiflora* Greene (white-rayed pentachaeta), *Streptanthus albidus* Greene ssp. *albidus* (Metcalf Canyon jewelflower), and *Streptanthus niger* Greene (Tiburon jewelflower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The destruction of habitat through residential or recreational development is the greatest threat faced by these species. The plants are limited to serpentine soils. Serpentine outcrops in the San Francisco Bay area are limited; 20 percent of those outcrops have already been eliminated as plant habitat due to development (McCarten 1987b). The pressure to build more houses, roads, and other facilities for humans is great in all the counties under consideration. Serpentine habitats also have been fragmented by the construction of roads such as Interstate 280. Habitat fragmentation increases the risks of extinction due to chance events such as fire, flood, landslide, pest or disease outbreaks, severe drought, or other natural or human-caused disaster.

Cordylanthus tenuis ssp. *capillaris* has never been known from more than the two populations that occur today. Ownership of the type locality is mixed; part of the population occurs on the Harrison Grade Preserve, which is owned and managed by the California Department of Fish and Game. Habitat on the preserve is threatened by unauthorized activities such as off-road vehicle use. Plants on private parcels are threatened with potential development.

The second population of *Cordylanthus tenuis* ssp. *capillaris* occurs on private property a few miles to the west of the type locality. Plans for residential development of this site are currently under review at the Sonoma County Planning Department (Betty Guggolz, pers. comm. 1992). The owner of this property has been working with the California Department of Fish and Game to minimize impacts to the *Cordylanthus tenuis* ssp. *capillaris* (Ann Howald, California Department of Fish and Game, pers. comm., 1992). Plans include the donation of over 40 hectares (ha) (100 acres), including *C. tenuis* ssp. *capillaris* habitat, to the county for use as a park (Betty Guggolz, pers. comm., 1992). This donation may afford protection to part of the second population of *C. tenuis* ssp. *capillaris*, but since the transfer has not yet taken place and no plans have been made for protection of the plant on this new park, the population still should be considered threatened by development.

Calochortus tiburonensis is at present protected from development because the land on which it occurs is owned and managed by The Nature Conservancy, a group whose management goals are the maintenance of biodiversity and the protection of rare and endangered species (Larry Serpa, pers. comm., 1992). The preserve is fenced to reduce the incidence of off-road vehicle use, but the site is still accessible to bicycles, motorbikes, and pedestrians, and it is not patrolled. The proximity of the preserve to residential areas renders it vulnerable to overuse and vandalism. Furthermore, this preserve, being on The Nature Conservancy's list of potential divestitures, will transfer ownership when a suitable organization is found to manage it (Larry Serpa, pers. comm., 1992).

Castilleja neglecta has never been widespread. Three of the five populations occur on the Tiburon Peninsula in Marin County, and one occurs in Napa County. A recently discovered population on the Golden Gate National Recreation Area extends the known range to western Marin County. Each of the three occurrences on the Tiburon Peninsula has multiple landowners. The Nature Conservancy owns over half of the Ring Mountain occurrence and the town of Tiburon owns portions of the occurrence in the Middle Ridge area of the peninsula. The remainder of each of these occurrences is privately-owned. The third occurrence on the peninsula is on private property near St. Hilary's Church in Tiburon. Development on the Tiburon Peninsula is extensive and rapid; over 60 percent of *C. neglecta* habitat has already been destroyed by development (Hunter 1989a). Residential development is ongoing on several parcels of the Middle Ridge occurrence, and proposed for both parcels at the St. Hilary's occurrence. The habitat at both of these sites is also threatened by pedestrian traffic. The plants on Ring Mountain Preserve are protected from development but are threatened by sliding of the slope on which they occur. The toe of the slope was removed to accommodate residential development in the 1960s. Soil material that slides into the street at the base of the slope is removed by the City of Corte Madera, and the slope continues to slump. Managers from The Nature Conservancy estimate that approximately one-third of the population is at risk (Lynn Lozier, pers. comm., 1992). The Napa County population occurs on private property near a gravel quarry. Although quarry expansion plans that would result in the

destruction of more than 80 percent of the population are no longer being actively pursued, the potential for expansion still exists.

Streptanthus niger is an extremely narrowly-distributed species; its entire range amounts to less than one-third of a square mile. Urban development has destroyed over 40 percent of potential *S. niger* habitat (Hunter 1989b). Both of the two known occurrences have multiple landowners. The town of Tiburon owns portions of the occurrence on the Middle Ridge of the peninsula, and the occurrence at St. Hilary's Church in Tiburon is owned in part by the Tiburon Landmark Society. The remainder of each of these two occurrences is privately-owned. Residential development is ongoing at several parcels of the Middle Ridge occurrence, and proposed for both parcels of the St. Hilary's occurrence. Habitat at both of these sites is also threatened by pedestrian traffic.

Clarkia franciscana was once though to be restricted to the Presidio in San Francisco County, but about 10 years ago a population was discovered in Alameda County in the Oakland hills. The two populations in San Francisco County occur at the Presidio, currently owned by the U.S. Department of Defense. These populations are threatened by habitat degradation. The Army has plans to fence rare plant habitat on the Presidio; at present, however, pedestrian and mountain bicycle traffic on and near casually established "social trails" threatens the habitat. Ownership of the Presidio is expected to be transferred from the Army to the National Park Service within a year. The Presidio represents a significant natural and cultural resource within San Francisco city limits, and is expected to be widely promoted by the Park Service and heavily used by visitors (Terri Thomas, Golden Gate National Recreation Area, pers. comm., 1992). The increase in visitation after transfer to the Park Service will increase the negative impact of traffic on *C. franciscana*.

The three populations of *Clarkia franciscana* in Alameda County are all threatened by alien species (see Factor E). The smallest of the three, consisting of 30 plants (Olson 1991c) occurs on an undeveloped site that bears a sign offering custom-built homes.

One occurrence of *Cirsium fontinale* var. *fontinale* has been reported from Santa Clara County, but the site is thought to have been destroyed by urbanization (Niehaus 1977). The three remaining populations grow in San Mateo County. The largest population occurs to the east of Crystal Springs Reservoir and north of State Highway 92, along both sides of Interstate 280. It occurs partly on San Francisco Water Department land and partly on a California Department of Transportation right-of-way. Given its proximity to the roadside, it is likely to be affected by any highway projects in the area. Major realignments of Highway 92 were planned several years ago, but the plans have been abandoned due to lack of funding (Richard Vonarb, California Department of Transportation, pers. comm., 1992). They could be revived, however, if funding should become available. At present, a smaller project to widen Highway 92 east of the reservoir causeway is under review. Provision for the removal of water from the increased road surface may adversely affect some of the plants. The California Department of Transportation is aware of the plant locations and vulnerability. The proposed construction of multi-use recreational trails on San Francisco Water Department land presents an additional threat. Trail construction would threaten the plants through direct destruction of the habitat or through modification of hydrologic regimes. Because *C. fontinale* var. *fontinale* is dependent upon seeps and springs to provide abundant soil moisture, any disruption in the flow of water (such as that caused by road, trail, or drain construction) would threaten the plants.

A second and substantially smaller population of *Cirsium fontinale* var. *fontinale* occurs in the "Triangle" west of Interstate 280. One to two hundred plants have been observed on San Francisco Water Department lands; an outlying colony of about 25 plants occurs on an easement held by the California Department of Transportation. This colony occupies a smaller territory in 1992 than it has in previous years (Susan Sommers, pers. comm., 1992). The plants on Water Department land are threatened by proposed trail construction, as discussed for *Hesperolinon congestum*. In addition, a general management plan for the Water Department lands currently is being developed (Ed Stewart, San Francisco Water Department, pers. comm., 1992), which may include the possibility of golf course construction at the Triangle.

The single specimen of *Cirsium fontinale* var. *fontinale* in Edgewood County Park occurs in a drainage ditch beside a trail. Clearing of the ditch to improve or maintain drainage could damage or destroy this plant or any seedlings it may produce.

Eriophyllum latilobum has been reported from only two locations, one of which is likely erroneous (specimen misidentified, according to Barry Prigge, pers. comm., 1992). The single remaining population consists of about 300 plants that occur along 4 km (2.5 miles) of Crystal Springs Road in San Mateo County. Seventy-five percent of the plants occur within 9 m (30 ft) of the road, where land ownership is poorly defined (McGuire 1992). The City of Hillsborough, the County of San Mateo, and the San Francisco Water Department have varying jurisdictions over the land. The steep slopes along Crystal Springs Road provide a very unstable habitat for *E. latilobum*. The slopes are subject to erosion and soil slippage. After soil slippage occurs, road maintenance crews remove the slumped soil, which may contain mature individuals, seedlings, and/or seeds of the *E. latilobum*. The road cut is then reshaped, which may damage plants remaining on the banks. The proposed construction of the San Mateo Creek Trail (McGuire and Morey 1992) would have adverse impacts on the plant if trail design does not incorporate plant conservation. The paved trail, which is 3 m (10 ft) wide, is expected to run adjacent to Crystal Springs Road from Skyline Boulevard to the San Mateo City boundary. Construction of the trail could damage or eliminate colonies of *E. latilobum*, alter site hydrology, accelerate soil erosion through increased pedestrian and bicycle traffic, and allow for the introduction of aggressive alien plant species.

Fourteen populations of *Hesperolinon congestum* still exist. One Marin County population is protected at The Nature Conservancy's Ring Mountain Preserve. Two relatively small populations occur on land owned by the Marin Municipal Water District. Another small population is found in the Golden Gate National Recreation Area above Nicasio Reservoir. A fifth population occurs in part on a small preserve at St. Hilary's Church, and in part on private land which recently has been proposed for development (Robison and Morey 1992a). The sixth Marin County site is the Middle Ridge area of the Tiburon Peninsula, on which occur a few scattered groups of plants. Some plants grow on land designated as open space by the city of Tiburon. The remainder of the plants occur on private land and are threatened by ongoing or proposed residential development.

One population of *Hesperolinon congestum* is known from San Francisco County. This occurrence is threatened by foot traffic.

In San Mateo County, three populations of *Hesperolinon congestum* are known to occur on private property.

These plants are threatened by proposed development and by the consequences of recently completed development, such as trampling, trash dumping, and changes in hydrology caused by irrigation runoff (Robison and Morey 1992a). Two populations occur on land owned by the San Francisco Water Department. Their habitat is threatened by the proposed construction of trails in the watershed. The construction of these trails and the accompanying fences may damage *Hesperolinon congestum* habitat. Two populations occur at Edgewood County Park and have been threatened by the proposed construction of a golf course at the park. On May 5, 1992, the county board of supervisors voted to declare Edgewood County Park a natural preserve. This designation will provide guidance to park personnel in determining uses of the park, but it has no enforcement provisions, and can be revoked by a vote of the board of supervisors.

Pentachaeta bellidiflora historically ranged from Marin County to Santa Cruz County. Three populations in Marin County and two in San Mateo County were destroyed by urbanization. One Marin County occurrence was destroyed by off-road vehicles. Two sites in Santa Cruz County no longer support *P. bellidiflora* (Robison and Morey 1992b). The single remaining population of *P. bellidiflora* was bisected by the construction of California Interstate 280 in the late 1960s. The largest portion of the population occurs in the Triangle, on land administered by the San Francisco Water Department. A small remnant of this population is located to the east of Interstate 280, on Edgewood County Park. The proposed construction of trails on Water Department land threatens the *P. bellidiflora* habitat.

Ceanothus ferrisae is known from three populations in Santa Clara County. The largest population, consisting of approximately 5,000 plants, occurs near Anderson Dam, partially on Santa Clara County Park property and partially on private property. The county proposes further recreational development in the park, which could threaten the *Ceanothus ferrisae* (Chris Nagano, U.S. Fish and Wildlife Service, pers. comm., 1992). An outlying population occurs 3 km (2 miles) west on land leased and managed by a waste management firm. Waste Management, Inc. and The Nature Conservancy jointly funded research on *C. ferrisae*, which was conducted by the Center for Conservation Biology. Researchers have found that *C. ferrisae* is relatively easy to propagate from seed, and both Waste Management and the Santa Clara Valley Water District have been experimenting with the use of *C. ferrisae* for revegetation projects. The third population, consisting of approximately 500 plants (Corelli 1989) occurs on private land scheduled for development.

Dudleya setchellii always has been restricted to the Coyote Valley area of Santa Clara County. Eleven of the 14 populations are on private land and are subject to various levels of threat due to development. The three northernmost populations, which occur in southeastern San Jose, and the three southernmost populations, which occur in the area around Morgan Hill, are at greatest risk. These areas are developing especially rapidly, and all six sites have been proposed for development at one time or another. Two of the central populations also are threatened with imminent development, including residential development and road construction. One central population, due to its proximity to an off-road motorcycle park, may be threatened by off-road motorcycle traffic and unauthorized dumping. The remaining two populations that occur on private land are on the grounds of the IBM Bailey Avenue laboratory. The company apparently plans to preserve the habitat (McCarten 1992a). Three populations occur on land owned by Santa Clara County. Of these, two populations occur in county parks. The final population occurs on county-owned land that is slated for the construction of a jail and an animal shelter. The county intends to avoid the *D. setchellii* habitat during construction (Kathy Freas, CH2M Hill, pers. comm., 1992), but specific plans have not yet been developed.

The known historical distribution of *Streptanthus albidus* ssp. *albidus* is as restricted as its current distribution. It is found only in the Coyote Valley area of Santa Clara Valley, primarily on the east side of the valley. Of the 13 documented sites, 9 are known to still harbor plants. Two populations are known to have been extirpated, one by the construction of Anderson Dam, and the other as a result of being covered by fill from a housing development. Two occurrences are known from herbarium records only. One of these historical sites was revisited in 1990, but no plants were found. *Streptanthus albidus* ssp. *albidus* was last observed at the other historical site in 1895. The remaining nine populations are threatened by impending or potential development. Two of these populations occur on county property on which the construction of a jail and an animal shelter is proposed. The county intends to avoid the *Streptanthus* habitat during construction (Kathy Freas, pers. comm., 1992) but specific plans have not yet been developed.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for any of the 12 plants, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal. *Calochortus tiburonensis* is a strikingly unusual member of a much-collected genus. *Eriophyllum latilobum*, with its showy golden flowers and proximity to roads and the proposed San Mateo Creek trail, might prove to be especially tempting to collectors. *Dudleya setchellii* is also vulnerable because of the horticultural appeal of succulents and the slow growth of the plants. The remaining plants are usually not spectacular in flower, but may nonetheless appeal to collectors because of their rarity.

C. Disease or Predation

Both horses and deer have been reported to browse on *Cordylanthus tenuis* ssp. *capillaris*, but the number of plants damaged generally appears to be minimal (Lynn Lozier, pers. comm., 1992). Cattle grazing has been reported to threaten the western Marin population of *Castilleja neglecta* (Martin 1991) and a portion of the American Canyon occurrence (Hunter 1989a). Another source suggests, however, that cattle provide little threat to the American Canyon population because the plants occur on a very steep slope (Jake Ruygt, Napa Valley Chapter, California Native Plant Society, pers. comm., 1992).

Seed predation by beetle larvae has been reported for *Cirsium fontinale* var. *fontinale* (Dean Kelch, University of California, Davis, pers. comm., 1992); however, the extent of the impact of this seed predation on *C. fontinale* var. *fontinale* is unknown. Beetle larvae also have been observed in seed heads of *Eriophyllum latilobum* (McGuire and Morey 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (Division 2, Chapter 10 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species (Division 3, Chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed three of these species (*Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, and *Streptanthus niger*) as endangered, two species (*Calochortus*

tiburonensis and *Castilleja neglecta*) as threatened, and one species (*Cordylanthus tenuis* ssp. *capillaris*) as rare. The California Fish and Game Commission recently voted to list two other species (*Eriophyllum latilobum* and *Pentachaeta bellidiflora*) as endangered, and one species (*Hesperolinon congestum*) as threatened. Although both statutes prohibit the "take" of State-listed plants (Chapter 1.5 section 1908 and Chapter 10 section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least ten days in advance of changing the land use to allow salvage of such plant." (Chapter 1.5 section 1913).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species or their habitat. The protection of threatened and endangered species through CEQA is therefore dependent upon the good will of the lead agency involved, and in practice statements of overriding considerations are commonly prepared.

Three of the plants occur at Edgewood County Park in San Mateo County, which has recently been designated as a natural preserve. This designation is intended to encourage management for environmental protection, but it can be revoked by a vote of the county board of supervisors, and therefore does not provide dependable long-term protection for the plants.

Section 404 of the Clean Water Act regulates the placement of dredge and fill materials into waters of the United States (including small acreages above the headwaters of streams). Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of waters of the United States and adjacent wetlands, unless a listed species may be adversely affected. Individual permits, which are subject to more extensive review, are required for projects that affect greater than 10 acres.

The U.S. Army Corps of Engineers (Corps) is the agency responsible for administering the section 404 programs. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the agencies arise. In practice, the Corps' actions under section 404 would not adequately protect *Cirsium fontinale* var. *fontinale*, which occurs in riparian serpentine seep areas.

Most projects within the range of *Cirsium fontinale* var. *fontinale* considered in this proposal may require approval from the Corps as currently described in section 404 of the Clean Water Act. Federal listing of this species would ensure greater consideration of the effects of permitted actions during the review process as well as provide the protections of section 7 of the Act.

E. Other Natural of Manmade Factors Affecting its Continued Existence

As discussed in the "Background" section, the large and still increasing numbers of people in the San Francisco Bay area place a great strain on undeveloped wildlands, through activities such as pedestrian and off-road vehicle traffic and unauthorized garbage dumping. Disturbance may directly impact plants; more seriously, it can increase erosion and allow the invasion of alien species such as the many introduced annual grasses common in California. Competition with introduced species is a serious threat to serpentine natives (McCarten 1987b).

Cordylanthus tenuis ssp. *capillaris* growing along roadsides is threatened by roadside maintenance such as mowing and spraying (Lynn Lozier, pers. comm., 1992). Vehicular traffic threatens plants in and near the parking area at the Harrison Grade Reserve, which is poorly defined and close to the plant population (McCarten 1987a). Unauthorized dumping of large items such as bottles, furniture, appliances, and cut wood is also a threat. Light disturbance at the Harrison Grade Reserve such as infrequent grading of dirt roads appears to increase the number of *C. tenuis* ssp. *capillaris* (Lynn Lozier, The Nature Conservancy, pers. comm., 1992), but higher levels of disturbance may facilitate the invasion of alien species (McCarten 1987a) and result in a decline of *C. tenuis* ssp. *capillaris*.

Calochortus tiburonensis is threatened, by virtue of its occurrence in a single population, with chance events such as fire, severe drought, pest or disease outbreak, landslides, or other natural or human-caused disasters. The proximity of the plant to a large human population increases the likelihood that human-caused disasters or acts of vandalism will affect the plants or their habitat.

Clarkia franciscana is threatened by road maintenance (mowing) at the Presidio. Mowing of grasslands before the *Clarkia franciscana* has set seed also threatens the populations. Populations at the Presidio also are threatened by the encroachment of alien plant species, including *Senecio mikanioides* (German ivy), *Carpobrotus* sp. (iceplant), *Rubus* spp. (blackberries), and by natives planted outside their natural range, such as *Pinus radiata* (Monterey pine) (California Department of Fish and Game 1988). The population size at the type locality increased following removal of alien plant species in the late 1980s. Constant vigilance and effort is needed to prevent reinvasion.

At latest report the largest population of *Clarkia franciscana*, occurring at Redwood Regional Park in Alameda County, consisted of 4,000–5,000 plants (Gottlieb and Edwards 1992, Olson 1991a). The East Bay Regional Park District is aware of the *Clarkia franciscana* population and has been taking it into account in their management plans (Ray Budzinski, East Bay Regional Park District, pers. comm., 1992). The habitat is threatened by competition with annual grasses (Ray Budzinski, pers. comm., 1992) and other alien plants, including *Cortaderia selloana* (pampas grass) and *Cytisus monspessulanus* (French broom) (Olson 1991a). The two smaller populations in Alameda County, consisting of 200 plants (Olson 1991b) and 30 plants (Olson 1991c) respectively, are also threatened by alien species *Cytisus monspessulanus* and *Cortaderia jubatum*. The larger of the two occurs on a roadcut.

The Crystal Springs Reservoir population of *Cirsium fontinale* var. *fontinale* is threatened by several factors, including roadside maintenance. The California Department of Transportation is aware of the rare plants in this area, and the maintenance division submits spraying plans for internal environmental review before spraying in the area where plants are known to occur (Richard Vonarb, pers. comm., 1992). Alien plants such as *Cortaderia selloana* have established themselves near the *C. fontinale* var. *fontinale*, and threaten several subpopulations (Zoe Chandik, pers. comm., 1992). Dumping of garden debris from households on the ridge above the plants covers plants and renders the habitat unsuitable for plant establishment and growth. It has been suggested that *C. fontinale* var. *fontinale* may be threatened with hybridization with *Cirsium quercetorum*, but only one hybrid has been collected in recent years, so this is not thought to be a serious problem (Dean Kelch, pers. comm., 1992).

Eriophyllum latilobum is threatened by many factors. Dumping of garden debris and downhill seepage of pesticides from homeowners living above the population may have negative impacts on *E. latilobum* habitat. The plant also is threatened by competition with alien plants; its habitat is more densely populated with *Carduus* sp. and *Bromus* sp. than it was 10 years ago (John Mooring, pers. comm., 1992). Road maintenance also threatens *E. latilobum*. Preemergent herbicide is commonly used along the side of the road; drift from herbicide spray may damage those plants close to the road. San Mateo County road maintenance crews were alerted to the existence of *E. latilobum* in 1990, and instructed to avoid the plants by the San Mateo County Planning Department; however, road maintenance activities are not monitored to ensure protection (Roman Gankin, San Mateo County Planning Division, pers. comm. to Teri McGuire, Botanist, California Department of Fish and Game, cited in McGuire and Morey 1992). *E. latilobum* is not a vigorous reproducer; low germination rates and low seedling survival have been observed under greenhouse conditions (John Mooring, *in litt.*, 1992, in McGuire and Morey 1992).

Hesperolinon congestum is threatened by the encroachment of native shrubs in San Francisco County. In San Mateo County all three populations are threatened by trash dumping as a consequence of recently completed development.

Pentachaeta bellidiflora is potentially threatened by competition from alien plant species; this competition becomes a problem when the soils are disturbed (Robison and Morey 1992b).

Ceanothus ferrisae is threatened by unauthorized dumping of litter and larger debris at the Anderson dam site.

Streptanthus albidus ssp. *albidus* is threatened by dumping and off-road motorcycle use. Road maintenance or construction threaten populations that occur on roadcuts. Grazing threatens some other populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. These 12 plants are endemic to a very specific habitat that occurs in scattered outcrops. The rapid urban development in the San Francisco Bay region offers the greatest threat to these plants. They are threatened further by the invasion of alien species, roadside maintenance, soil erosion and slipping, garbage dumping, livestock grazing, seed predation, and small population sizes that increase their vulnerability to chance events such as fire, flood, drought, pest and disease outbreaks, and other natural and human-caused disasters. Ten of the 12 are in danger of extinction throughout all or a part of their range, and the preferred action is therefore to list *Castilleja neglecta*, *Ceanothus ferrisae*, *Cirsium fontinale* var. *fontinale*, *Clarkia franciscana*, *Cordylanthus tenuis* ssp. *capillaris*, *Dudleya setchellii*, *Eriophyllum latilobum*, *Pentachaeta bellidiflora*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus niger* as endangered. Two of the twelve are not now in immediate danger of extinction throughout all or a significant portion of their range. However, given the extremely limited distribution of *Calochortus tiburonensis*, and if appropriate management actions are not taken to protect *Hesperolinon congestum*, these two species are likely to become in danger of extinction in the near future. As a result, the preferred action is to list *Calochortus tiburonensis* and *Hesperolinon congestum* as threatened.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Because the 12 plants face numerous anthropogenic threats (see Factors A and E in "Summary of Factors Affecting the Species") and the 12 occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species as endangered or threatened also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants. The proper agencies have been notified of the locations and importance of protecting the habitat of these species.

Protection of the habitat of these species will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the

continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities potentially affecting one or more of the 12 plants likely will involve recreation-related projects and perhaps grazing practices on Federal land. Populations of 3 of the 12 plants occur on Federal land. Two populations of *Hesperolinon congestum* and one of *Castilleja neglecta* occur on the golden Gate National Recreation Area. Two populations of *Clarkia franciscana* occur at the Presidio, on land now owned by the Department of Defense and soon to be transferred to the Golden Gate National Recreation Area.

The San Francisco Water Department owns 9,300 ha (23,000 acres) of land in San Mateo County. In 1969, a four-party agreement among the U.S. Department of the Interior, the State of California, San Mateo County, and the City and County of San Francisco established easements on the watershed lands to ensure that all future land use would be compatible with water quality criteria. These easements were granted to the U.S. Department of the Interior and are jointly administered by the San Francisco Water Department and the Golden Gate National Recreational Area. Populations of *Cirsium fontinale* var. *fontinale, Eriophyllum latilobum, Hesperolinon congestum* and *Pentachaeta bellidiflora* occur on Water Department land.

Hesperolinon congestum, Pentachaeta bellidiflora, Dudleya setchellii, and *Streptanthus albidus* ssp. *albidus* co-occur with the bay checkerspot butterfly (*Euphydryas editha bayensis*) in San Mateo or Santa Clara counties. The bay checkerspot is listed as a threatened species under the Endangered Species Act. Permits for incidental take of this species granted under section 10(a) of the Act may affect the plant species listed above. Preparation of Habitat Conservation Plans for the Bay checkerspot butterfly may therefore require internal section 7 consultation with regard to the four species listed above.

The 12 plants also may be affected by Federal mortgage programs, including the Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans), or by construction of roads and highways by the Federal Highways Administration. At least one proposed project that may affect two of the plants also involves wetlands under the jurisdiction of the U.S. Army Corps of Engineers.

Listing these 12 plants would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also would describe site-specific management actions necessary to achieve conservation and survival of the 12 serpentine plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the 12 plants from San Francisco Bay area serpentine habitats, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the 12 species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cordylanthus tenuis* ssp. *capillaris, Calochortus tiburonensis, Castilleja neglecta, Streptanthus niger, Clarkia franciscana, Cirsium fontinale* var. *fontinale, Eriophyllum latilobum, Hesperolinon congestum, Pentachaeta bellidiflora, Ceanothus ferrisae, Dudleya setchellii,* or *Streptanthus albidus* ssp. *albidus*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Jeanine L. Hardison, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17 subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding a new family "Linaceae—Flax family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * * *		*		*		*
Asteraceae—Aster family:						
* * * *		*		*		*
Cirsium fontinale var. *fontinale*	Fountain thistle	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Eriophyllum latilobum	San Mateo woolly sunflower	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Pentachaeta bellidiflora	White-rayed pentachaeta	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Brassicaceae—Mustard family:						
* * * *		*		*		*
Streptanthus albidus ssp. *albidus*	Metcalf Canyon jewelflower	U.S.A. (CA)	E		NA	NA
Streptanthus niger	Tiburon jewelflower	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Crassulaceae—Stonecrop family:						
Dudleya setchellii	Santa Clara Valley dudleya	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Liliaceae—Lily family:						
Calochortus tiburonensis	Tiburon mariposa lily	U.S.A. (CA)	T		NA	NA
* * * *		*		*		*
Linaceae—Flax family:						
Hesperolinon congestum	Marin dwarf-flax	U.S.A. (CA)	T		NA	NA
* * * *		*		*		*
Onagraceae—Evening-primrose family:						
* * * *		*		*		*
Clarkia franciscana	Presidio clarkia	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Rhamnaceae—Buckthorn family:						
Ceanothus ferrisae	Coyote ceanothus	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Scrophulariaceae—Snapdragon family:						
* * * *		*		*		*
Castilleja neglecta	Tiburon paintbrush	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*
Cordylanthus tenuis ssp. *capillaris*	Pennell's bird's beak	U.S.A. (CA)	E		NA	NA
* * * *		*		*		*

Dated: November 24, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-30252 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018—AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants from the Waianae Mountains, Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants: *Cyanea grimesiana* ssp. *obatae* (haha), *Diellia unisora* (no common name (NCN)), and *Gouania vitifolia* (NCN). These taxa are known primarily form the Waianae Mountain Range, located on the island of Oahu, Hawaii. The three plant taxa and their habitats have been adversely threatened in various degrees by one or more of the following: Habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat degradation and potential predation by feral animals. Because of the low number of extant individuals and severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also implement State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by February 12, 1993. Public hearing requests must be received by January 28, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

Cyanea grimesiana ssp. *obatae* and *Diellia unisora* are endemic to the Waianae Mountain Range on the western side of the island of Oahu, Hawaii. The only known extant population of *Gouania vitifolia* also occurs in the Waianae Mountains, but the species is known historically also from West Maui and the island of Hawaii.

The island of Oahu is formed from the remnants of two large shield volcanoes, the older Waianae Volcano on the west and the younger Koolau Volcano on the east. Because of the loss of their original shield volcano shape as the result of extensive erosion, today these volcanoes are called "mountains" or "ranges," and consist of long, narrow ridges. The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 40 miles (mi) (64 kilometers (km)) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (Macdonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains. Except for Mt. Kaala, the highest point on Oahu (4,020 feet (ft) (1,225 meters (m))), the Waianaes receive much less rainfall (Wagner *et al.* 1990). The median annual rainfall for the Waianae Mountains varies from 20 to 75 inches (in) (51 to 191 centimeters (cm)), with only the small summit area of Mt. Kaala receiving the highest amount.

The land that supports these three plant taxa is owned by the State of Hawaii, the Federal government, and a private estate. Plants on Federal land are located on portions of Schofield Barracks Military Reservation and Lualualei Naval Reservation, both under the jurisdiction of the U.S. Department of Defense.

Discussion of the Three Taxa Proposed for Listing

Harold St. John described *Cyanea grimesiana* ssp. *obatae* based upon a specimen collected by John K. Obata in the Kaluaa Gulch of the Waianae Mountains, Oahu, in 1965 (St. John 1978). St. John named the subspecies in honor of its discoverer.

Cyanea grimesiana ssp. *obatae*, a member of the bellflower family (Campanulaceae), is a shrub, usually unbranched, growing from 3.3 to 10.5 ft (1 to 3.2 m) tall. Its leaves are 10.5 to 23 in (27 to 58 cm) long by 5.5 to 12.5 in (14 to 32 cm) wide and are deeply cut into 9 to 12 lobes per side. The plant usually has small prickles on its stem and leaves. Clusters of 6 to 12 stalked flowers arise from the leaf axils. Sepals are fused to the ovary forming a cup 0.3 to 0.6 in (0.7 to 1.6 cm) long with small, narrow, triangular lobes at the tips. The petals are purplish or greenish to yellow-white, often washed or striped with magenta, and are about 2 to 3 in (5.5 to 8 cm) long and 0.2 to 0.4 in (0.5 to 1 cm) wide. Fruits are elliptical orange berries, 0.7 to 1.2 in (1.8 to 3 cm) long. This subspecies can be distinguished from the other two by its short, narrow, calyx lobes which are not fused or overlapping (Lammers 1990, St. John 1978).

Historically, *Cyanea grimesiana* ssp. *obatae* is known from the southern Waianae Mountains from Puu Hapapa to Kaaikukai (Hawaii Heritage Program (HHP) 1992a1 to 1992a6, Lammers 1990), a distance of about 4 mi (6.5 km). This taxon is known to be extant in Kaluaa, Ekahanui, and North Palawai Gulches, all on privately owned land, and on the slopes of Puu Hapapa in the Schofield Barracks Military Reservation (HHP 1992a2, 1992a5, 1992a6). The known extant plants total about 18 individuals in 4 populations (Joel Lau, HHP, pers. comm., 1992). *Cyanea grimesiana* ssp. *obatae* typically grows on steep, moist, shaded slopes in diverse mesic to wet forests at an elevation of 1,800 to 2,200 ft (550 to 670 m) (HHP 1992a2, Lammers 1990). Associated plants include both native and introduced species such as *Pipturus albidus* (mamaki), *Charpentiera* (papala), *Claoxylon sandwicense* (po'ola), *Pisonia* (papala kepau), *Acacia koa* (koa), *Aleurites moluccana* (kukui) and ferns (HHP 1992a2). The major threats to *Cyanea grimesiana* ssp. *obatae* are competition from alien plant species such as *Clidemia hirta* (Koster's curse) and *Schinus terebinthifolius* (Christmas berry) and stochastic extinction and/or reduced reproductive vigor due to the small number of extant individuals (HHP 1992a2). Habitat degradation by feral pigs is a potential threat (HHP 1992a2).

Donald L. Topping discovered *Diellia unisora* growing on a shaded, mossy bank in Pohakea Pass, Waianae Mountains, Oahu, in 1932. It was first reported and illustrated by Frances Smith (Smith 1934) who believed it to be a specimen of *Diellia pumila*, although she pointed out several differences between that species and the

Topping specimen. Warren H. Wagner, Jr., believing that the plant discovered by Topping merited specific recognition, described the new species, giving it the specific epithet *unisora* in reference to the usually single, marginal spore-producing body (Wagner 1951).

Diellia unisora, in the fern family Polypodiaceae, grows from a slender, erect rhizome (underground stem), 0.2 to 1.2 in (0.5 to 3 cm) tall and 0.2 to 0.4 in (0.4 to 1 cm) in diameter, which is covered with the bases of the leaf stalks and a few small black scales. Stalks of the fronds are black and shiny, and about 0.8 to 2 in (2 to 5 cm) long. The fronds are linear, 3 to 12 in (8 to 30 cm) tall by 0.2 to 1.2 in (0.5 to 3 cm) broad, with 20 to 35 pinnae (leaflets) per side, and gradually narrowing towards the apex. The pinnae are usually strongly asymmetrical in outline, unequally triangular, with mostly entire (smooth) margins. There usually is a single marginal sorus (the spore-producing body) running along the upper margin of the underside of the pinna. This species is distinguished from others in the genus by a rhizome completely covered by the persisting bases of the leaf stalks, and few, very small scales; by sori mostly confined to the upper pinnae margins; and by delicate fronds gradually and symmetrically narrowing toward the apex (Wagner 1951, 1952).

Historically, *Diellia unisora* was known from steep, grassy, rocky slopes on the western side of the Waianae Mountains, Oahu (HHP 1992b1 to 1992b4; Wagner 1951, 1952). This species is known to be extant in three areas of the southern Waianae Mountains: South Ekahanui Gulch, Palawai Gulch, and the Pualii-Napepeiauolelo Ridge (HHP 1992b2 to 1992b4). The 4 known populations, which are on Lualualei Naval Reservation and on privately owned land, are scattered over a distance of about 2 mi (3 km), and contain an estimated 700 individuals (HHP 1992b2 to 1992b4). *Diellia unisora* is a terrestrial fern which typically grows in deep shade or open understory in dryland forest at an elevation of 1,750 to 2,500 ft (530 to 760 m) (HHP 1992b2 to 1992b4). Associated species include koa, Christmas berry, *Psidium cattleianum* (strawberry guava), and *Metrosideros polymorpha* ('ohi'a), and a mixture of alien and native grasses, forbs, and shrubs (HHP 1992b2 to 1992b4). The major threat to *Diellia unisora* is competition from alien plant species (Christmas berry, *Melinus minutiflora* (molasses grass), *Passiflora suberosa* (huehue haole), and strawberry guava); habitat degradation by feral pigs is a potential threat (HHP 1992b2, 1992b4).

Gouania vitifolia was first collected "on dry hills, in the district of Waianai [Waianae]" during the U.S. Exploring Expedition in 1840. Asa Gray was given the task of preparing a report on all of the foreign plants collected by the expedition. Of the two volumes he produced concerning these specimens, only one was published, and in it *Gouania vitifolia* was described as a new species (Gray 1854). The species epithet was derived from the Latin *vitis*, a vine or grapevine, and *folium*, leaf, as the toothed leaves of this species resemble those of the grape. The Maui Island population of this species, first collected above Lahaina on West Maui by Edward F. Bishop, probably in the 1870s, was described and named *G. bishopii* in honor of its discoverer by William Hillebrand (Hillebrand 1888). In his monograph of the genus, St. John described *G. hawaiiensis* as a new species based upon a collection made in the Kau District of Hawaii Island in 1853 by Jules Remy (St. John 1969). Both of these taxa are currently considered synonyms of *Gouania vitifolia* (Wagner *et al.* 1990).

Gouania vitifolia, a member of the buckthorn family (Rhamnaceae), is a climbing shrub or woody vine with tendrils. Leaves are papery in texture with a moderate to dense covering of short, soft hairs on both surfaces. The leaves are elliptic to broadly oval in outline with toothed or lobed margins and 1.2 to 3.2 in (3 to 8 cm) long by 0.8 to 1.9 in (2 to 4.8 cm) wide. Flowers are arranged in axillary spikes 0.3 to 2.8 in (0.8 to 7 cm) long. The flowers are small with sepals and petals ranging from 0.03 to 0.04 in (0.7 to 1.1 millimeters (mm)) in length; both are white. The 2- or 3-winged fruit are about 0.4 in (9 to 10 mm) long. Seeds are oval, glossy, dark brown, and about 0.1 to 0.2 in (3.4 to 5 mm) long. This species is the only Hawaiian member of the genus with tendrils and toothed leaf margins (St. John 1969, Wagner *et al.* 1990).

Historically, *Gouania vitifolia* was known from West Maui; the Kau District of the island of Hawaii; and the northwestern portion of the Waianae Mountains in Makaleha, Keaau, and Waianae Kai Valleys (Degener and Greenwell 1947, HHP 1992c1 to 1992c5, St. John 1969, Wagner *et al.* 1990). A single population of five individuals was discovered in 1990 on the slopes of Waianae Kai Ridge on State-owned land (Anon. 1991, HHP 1992c5). Previously, the plant was believed extinct since it had not been observed since the 1930s. The five plants are close to one another, growing in a single patch in a forest of mostly naturalized, non-native species (HHP 1992c5), and may represent clones of a single individual (J. Lau, pers. comm., 1992). Information is scant, but data from herbarium labels indicate that *Gouania vitifolia* prefers dry, rocky ridges and slopes in dry shrubland or dry to mesic forests at an elevation of about 2,000 ft (610 m). Associated species include strawberry guava, kukui, Christmas berry, huehue haole, and mamaki (HHP 1992c5). The major threats to *Gouania vitifolia* are competition from alien plant species such as strawberry guava and Christmas berry; habitat destruction by feral pigs; and stochastic extinction and/or reduced reproductive vigor due to the small number of extant individuals, all of whom may be genetically identical (HHP 1992c5).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Diellia unisora* was considered threatened and *Gouania vitifolia* was considered extinct in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. *Gouania vitifolia* was considered endangered in the proposed rule, but *Diellia unisora*, as a threatened species, was not included. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the

Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). *Gouania vitifolia* was included as a Category 1* species on all three notices of review. Category 1* taxa are those for which the Service has on file substantial information on biological vulnerability and threats in the recent past, but which may have already become extinct. Because a population of *Gouania vitifolia* was discovered in 1990, it is proposed herein for listing. *Diellia unisora* was considered a Category 1 species on the 1980 and 1985 notices, but was changed to a Category 1* species on the 1990 notice. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. With the rediscovery of *Diellia unisora* in 1991, this taxa was given high priority for listing and is thus included in this proposal. *Cyanea grimesiana* ssp. *obatae* first appeared on the 1990 notice, as a Category 2 taxon. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Additional recently acquired biological information supports listing of *Cyanea grimesiana* ssp. *obatae*.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposal constitutes the final 1-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyanea grimesiana* ssp. *obatae* St. John (haha), *Diellia unisora* W.H. Wagner (no common name (NCN)), and *Gouania vitifolia* A. Gray (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitats of the plants included in this proposed rule have undergone extreme alteration because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Frierson 1973, Wagner *et al.* 1985). Competition with alien plants and degradation of habitat by feral pigs are considered the greatest present threats to the three taxa being proposed.

All of the three plant taxa being proposed for listing are threatened by competition from one or more alien plant species. *Schinus terebinthifolius* (Christmas berry), an aggressive tree introduced to Hawaii before 1911 as an ornamental, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing alien plant is able to form dense thickets, displacing other plants, and also may release a chemical that inhibits the growth of other species (Smith 1985). As early as the 1940s, Christmas berry had invaded the dry slopes of Oahu; it is now replacing the native vegetation of much of the southern Waianae Mountains (Cuddihy and Stone 1990). Christmas berry is gradually invading other areas of the Waianae Mountains as well, and now threatens to occupy the habitat of the three plant taxa being proposed (HHP 1992a2, 1992b2 to 1992b4, 1992c5).

Psidium cattleianum (strawberry guava), a pervasive alien tree in the southern Waianae Mountains, is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). Like Christmas berry, strawberry guava is capable of forming dense stands to the exclusion of other plant species (Cuddihy and Stone 1990). Populations of *Diellia unisora* and *Gouania vitifolia* are immediately threatened by competition with this alien plant (HHP 1992b3, 1992c5).

Clidemia hirta (Koster's curse), a noxious shrub first cultivated in Wahiawa on Oahu, spread to the Koolau Mountains in the early 1960s, where it is now rapidly displacing native vegetation. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout Honouliuli (Cuddihy and Stone 1990, Culliney 1988). This species forms a dense understory, shading other plants and hindering plant regeneration. At present, Koster's curse is the major threat to *Cyanea grimesiana* ssp. *obatae* (HHP 1992a2).

The native vegetation of the leeward ridges of the Waianae Mountains is being replaced by *Melinis minutiflora* (molasses grass), another aggressive alien plant species. Molasses grass ranges from the dry lowlands to the lower wet forests, especially in open areas with sparse vegetation. This fire-adapted grass produces a dense mat capable of smothering plants, provides fuel for fires, and carries fires into areas with native woody plants (Cuddihy and Stone 1990). The population of *Diellia unisora* located on the leeward slopes of the Waianae Mountains is most vulnerable to molasses grass (HHP 1992b2, 1992b4).

Passiflora suberosa (huehue haole), a vine that smothers small plants in the subcanopy of dryland habitats (Smith 1985), poses an immediate threat to some populations of *Diellia unisora* (HHP 1992b2, 1992b3). With its major infestations in the Waianae Mountains, it is also a probable threat to the only known extant population of *Gouania vitifolia* (HHP 1992c5).

Feral pigs (*Sus scrofa*) have been in the Waianae Mountains for about 150 years and are known to be one of the major current modifiers of forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor and encourage the expansion of alien plants that are better able to exploit the newly tilled soils than are native species (Stone 1985). Pigs also disseminate alien species through their feces and on their bodies, accelerating the spread of alien plant species within the native forest. Present throughout the Waianae Mountains in low numbers, feral pigs pose a potential threat as some pig trails and rooting have been seen in the general areas of all three plant taxa included in this proposed rule. The rooting was localized and no direct damage to any of the proposed plants was noted. However, this situation could change very quickly (HHP 1992a2, 1992b2, 1992b3, 1992c5).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive

visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all of the proposed taxa, but especially to *Gouania vitifolia*, which is known from only 1 population of 5 individuals, and *Cyanea grimesiana* ssp. *obatae*, known from 4 populations totaling 18 individuals. Any collection of whole plants or reproductive parts of these two taxa would cause an adverse impact on the gene pool and threaten the survival of the taxon. Disturbance to the area by human trampling also could promote erosion and greater ingress by competing alien species.

C. Disease or Predation

There is no direct evidence that disease or predation threatens the three proposed taxa. However, rats (*Rattus* spp.) and feral goats (*Capra hircus*), as well as feral pigs, are known from the area and damage to fruits, seeds, and plants from their foraging on other species has been observed.

D. The Inadequacy of Existing Regulatory Mechanisms

Of the three proposed taxa, two have populations located on private land, one on State, and two on Federal land: *Cyanea grimesiana* ssp. *obatae* and *Diellia unisora* are known only from Federal and private lands; *Gouania vitifolia* is known only from State land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these taxa on private land. None of the three proposed taxa are now listed by the State. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or wild plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these three plant taxa would therefore reinforce and supplement the protection available to the taxa under State law. The Federal Act also would offer additional protection to these three taxa because, if they were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and individuals of all of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. *Gouania vitifolia* is known from a single population of five individuals. The other 2 proposed taxa are known from only 4 populations, totaling 18 individuals of *Cyanea grimesiana* ssp. *obatae* and 700 individuals of *Diellia unisora*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list these three plant taxa as endangered. These taxa either number no more than about 20 individuals or are known from fewer than 5 populations. The three taxa are threatened by one or more of the following: Habitat degradation and competition from alien plants; habitat degradation and potential predation by feral animals, particularly pigs; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because these three taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being proposed for the three taxa included in this proposed rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowner have been notified of the general location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. Two of these taxa are located on federally owned military reservations, but both are on steep slopes near the reservation boundaries where they are unlikely to be impacted by Federal activities. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency

cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of these plant taxa are located on the Lualualei Naval Reservation or Schofield Barracks Military Reservation, both under the jurisdiction of the U.S. Department of Defense. There are no other known Federal activities that occur within the present known habitat of these three plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the plants are not common in cultivation nor in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The author of this proposed rule is Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding a new family "Polypodiaceae—Fern family," in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •	•	•	•	•	•	
Campanulaceae—Bellflower family:						
• • •	•	•	•	•	•	
Cyanea grimesiana ssp. *obatae*	Haha	U.S.A. (HI)	E		NA	NA
• • •	•	•	•	•	•	
Polypodiaceae—Fern family:						
• • •	•	•	•	•	•	
Diellia unisora	None	U.S.A. (HI)	E		NA	NA
• • •	•	•	•	•	•	
Rhamnaceae—Buckthorn family:						
• • •	•	•	•	•	•	
Gouania vitifolia	None	U.S.A. (HI)	E		NA	NA
• • •	•	•	•	•	•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30253 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 921108–2308]

Groundfish Fishery of the Gulf of Alaska, and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would establish two trawl test areas in the Gulf of Alaska (GOA) and one trawl test area in the Bering Sea and Aleutian Islands (BSAI) area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI would otherwise be closed to trawling. Establishment of these test areas would allow vessel operators the opportunity to test their trawl gear before a season opens so that they could begin fishing efficiently at the beginning of a season. This would reduce lost fishing time from gear problems, and would promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska. Authority to establish test areas is contained in Amendment 27 to the Fishery Management Plan (FMP) for Groundfish of the GOA and in Amendment 22 to the FMP for the Groundfish Fishery of the BSAI Area. These amendments were submitted to the Secretary of Commerce (Secretary) by the Council and are pending the Secretary's review and approval.

DATE: Comments are invited until January 8, 1993.

ADDRESS: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of proposed Amendments 22 and 27 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fisheries Management Biologist, NMFS, (907) 586–7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary under the FMP for Groundfish of the GOA and the FMP for the Groundfish of the BSAI area. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Amendment 27 to the GOA FMP and Amendment 22 to the BSAI FMP were recommended to the Secretary by the Council at its January 13–18, 1992, meeting, and are under Secretarial review. A notice of availability of the amendments was published on September 25, 1992 (57 FR 44355). If approved by the Secretary, these amendments would provide NMFS with the authority to establish trawl test areas. This rule proposes to establish two areas in the GOA and one area in the BSAI area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI is otherwise closed to trawling. Establishment of these test areas would allow vessel operators to test their gear before a season opens and begin fishing efficiently at the beginning of a season, reducing lost fishing time from gear problems.

Until recently, the GOA and BSAI have been open to trawling for most of the year, and fishermen were able to test trawl gear in preparation for a season opening. However, in 1992, new regulations (57 FR 382, January 6, 1992) delayed the opening of the trawl season in the GOA and BSAI from January 1 until January 20. A similar delay of the GOA and BSAI trawl fisheries until January 20 is in effect for 1993 and beyond (57 FR 43926, September 23, 1992) to reduce bycatch rates of chinook salmon and Pacific halibut. Therefore, from January 1 until January 20 of each year, trawl gear may not be deployed in the GOA and BSAI, and fishermen will be unable to test their trawl gear before the trawl season opening.

Fishing with trawl gear is also prohibited at other times of the year in the GOA. If a quarterly allocation of halibut bycatch for trawl gear is taken, non-pelagic trawling is prohibited for the remainder of that quarter. This would prohibit fishermen from testing their bottom trawl gear before the next bottom trawling season begins.

There are several reasons for fishermen to test trawl gear before season openings. Fisheries are closing earlier because increasingly larger fleets are harvesting the total allowable catch (TAC) more quickly. The establishment of trawl test areas would enable fishermen to test their gear and begin fishing efficiently at the beginning of a season, reducing lost fishing time that might result from gear problems. In a similar trawl test program, the State of Washington allows vessels to use State waters in Puget Sound for trawl gear testing.

If approved, Amendments 27 and 22 would provide the Secretary with the authority to establish gear test areas, with no specific reference to a particular gear type. With this authority, the Secretary could implement any future gear test areas for any gear type by regulatory amendment, without amending the FMP. The amendments also include the following five criteria with which any geat test area must comply.

1. Depth and bottom type must be suitable for testing the particular gear type.

2. The areas must be outside State waters.

3. The areas must be in locations not normally closed to fishing with that gear type.

4. The areas must be in locations that are not usually fished heavily by that gear type.

5. The areas must not be within a designated Steller sea lion protection area at any time of the year.

This proposed rule would establish three trawl test areas (see Figure 1) bounded by straight lines connecting the following coordinates in the order listed:

GULF OF ALASKA—KODIAK

W. longitude	N. latitude
152° 02′	57° 37′
151° 25′	57° 37′
151° 25′	57° 23′
152° 02′	57° 23′
152° 02′	57° 37′

GULF OF ALASKA—SAND POINT

W. longitude	N. latitude
161° 00′	54° 50′
160° 30′	54° 50′
160° 30′	54° 35′
161° 00′	54° 35′
161° 00′	54° 50′

BERING SEA

W. longitude	N. latitude
167° 00′	55° 00′
166° 00′	55° 00′
166° 00′	54° 40′
167° 00′	54° 40′
167° 00′	55° 00′

Fishermen would be able to test trawl gear in these areas at times when trawling would otherwise be prohibited in those management areas under the following conditions:

(1) The cod end shall be left unzipped so that the trawl gear will not retain fish;

(2) Groundfish may not be on board; and

(3) The time vessels spend trawl gear testing in these three areas will not contribute towards observer coverage requirements, and the placement of observers on board these vessels will be at the discretion of the Regional Director.

Criteria for Gear Test Areas

The following explains how the three proposed trawl test areas comply with the criteria:

(1) Depth and bottom type must be suitable for testing pelagic and bottom trawl nets.

The Kodiak area has depths ranging from approximately 30–80 fathoms, the Sand Point area from 50–65 fathoms, and the Bering Sea area from 70–160 fathoms. These depths are suitable for bottom and pelagic trawling, and the bottom type is suitable for bottom trawling. Therefore, these test areas should be acceptable testing grounds for bottom and pelagic trawl gear. Each of these trawl test areas was chosen with the advice and assistance of trawl industry representatives.

(2) The areas must be outside Alaska State waters.

All of the trawl test areas are outside State waters.

(3) The areas must be in locations that are not usually heavily fished by trawling.

None of the three test areas is known to be an area of high trawl catch for groundfish.

(4) The areas must be in locations not normally closed to trawling.

None of the trawl test areas is in an area that is normally closed to trawling at any time of the year. However, the Bering Sea test area is entirely within the summer Herring Savings Area 2 (HSA 2). Herring Savings Area 2 regulations require that the attainment of a trawl bycatch allowance for herring would close the HSA 2 for the period from July 1 to August 15. NMFS believes that the Bering Sea test area would be required only from January 1 to January 20 before the trawl season opens. Because trawl bycatch amounts of herring are insignificant in the HSA 2 during January, conflicts should not result from having a trawl test area in HSA 2.

(5) The trawl test area must not be within a designated Steller sea lion protection area at any time of the year.

None of the three test areas is within a designated Steller sea lion protection area at any time of the year.

At the January 1992 Council meeting, the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) recommended that several issues of concern be addressed before the proposed FMP amendments and this proposed rule are published in the **Federal Register**. The following are responses to the SSC's and AP's concerns about the implementation of these trawl test areas:

(1) Species to be encountered in trawl test areas.

From the GOA and BSAI Stock Assessment and Fishery Evaluation Reports for 1992, the species that are likely to be encountered in these test areas are:

Kodiak and Sand Point Areas—walleye pollock, Pacific cod, flatfish, sablefish, rockfish, halibut, salmon, crab and other species.

Bering Sea Area—walleye pollock, Pacific cod, halibut, greenland turbot, arrowtooth flounder, sablefish, Pacific ocean perch, atka mackerel, and small amounts of rock sole, other flatfish, squid, and other species.

(2) Accessibility of these areas to fishermen.

Vessels fishing in the Gulf of Alaska could use the Kodiak and Sand Point test areas. Vessels fishing in the Bering Sea are primarily based in Dutch Harbor and Akutan, making the Bering Sea test area most convenient for testing. These test areas have been positioned to provide the best access to a test area by the majority of trawl vessels, and were chosen with input and consultation with the trawl fishing industry.

(3) The trawl test area should not be larger than is necessary to test the gear.

Kodiak Area—The approximate size for this area is 14 nautical miles (nm) by 18 nm, or 252 square nm. This is approximately the minimum size needed for a test area to allow vessels enough straight line distance and room to maneuver. For example, if a vessel is moving through a test area and begins gear testing at a normal trawling speed of 3–4 knots, the vessel could move in the same direction for about 4 hours. This should be enough time to solve most gear problems. Also, making the area nearly square provides room for vessel operators to use the test area without interfering with each other. This is important because vessels working on gear problems are less able to maneuver.

Sand Point Area—This area is approximately 15 nm by 15 nm, or 225 square nm, about the same size as the Kodiak area.

Bering Sea Area—This area is approximately 20 nm by 30 nm, or 600 square nm. This area is larger than the other two areas, because vessels that operate in the BSAI are larger. These larger vessels tow larger nets and are less capable of maneuvering because of their size. These factors contribute to the need for a larger area in the BSAI.

(4) Enforcement requirements for trawl test areas. Check in/check out or notification of trawl test area use may be required in the future to aid enforcement.

(5) *Trawl testing and crab opening conflicts.*

Crab fishing with pot gear and halibut fishing with hook and line gear are classified as stationary gear. Sometimes, movable gear such as trawl gear can conflict with stationary gear if both gear types are used on the same fishing grounds. If pot or hook and line gear is especially abundant, for example on a season opening for these gear types, it may be difficult for trawlers to avoid the stationary gear in the trawl test areas, resulting in conflict between stationary and movable gear types. In 1991, the King crab openings in the two GOA test areas were on September 25. Conflicts could have resulted in the GOA test areas if heavy use of the test areas occurred at the end of the third quarter due to a prohibition on trawling from exhausting the third quarter halibut PSC bycatch allocation. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the king crab fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

For 1991, the Tanner crab opening for all three areas occurred on January 15. Trawl testing would be required from January 1 to January 20 when trawling is prohibited in the GOA and BSAI. Therefore, heavy use of the trawl test areas could potentially conflict with the Tanner crab opening on January 15. Conflicts are not expected to occur to a great extent in the Bering Sea or the Sand Point test areas because few crab resources exist there. Crab resources in the Kodiak area are abundant, and the potential exists for conflict. NMFS does not believe that trawl testing during

these times of potential conflict will create a burden for the Tanner crab fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

(6) *Trawl testing and halibut opening conflicts.*

The Bering Sea test area falls within the International Pacific Halibut Commission (IPHC) fishing area 4A. For 1992, area 4A halibut fishing periods are from June 8 to June 9, from August 6 to announced closure, and from September 22 to announced closure. Trawl testing should not conflict with the halibut opening in the Bering Sea area, because the time of year that the Bering Sea trawl test area would normally be used would be from January 1 to January 20, when fishing with trawl gear in the BSAI is prohibited.

The Sand Point test area is in the IPHC area 3B, where the 1992 halibut fishing periods will be from June 8 to June 9, from September 7 to September 8, and from October 5 to announced closure. The Gulf of Alaska is closed to trawling from January 1 to January 20, and possibly near the end of each quarter if the quarterly allocation of halibut bycatch is exhausted. Halibut openings from June 8 to June 9 and September 7 to September 8 are near the end of the second and third quarters, respectively, so it is possible that the halibut bycatch for the trawl fleet would be taken and trawling would be prohibited resulting in use of the trawl test areas, thereby conflicting with the area 3B halibut opening. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the Pacific halibut fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

The Kodiak test area is in IPHC area 3A, and has the same 1992 halibut fishing periods as the Sand Point area. The Kodiak test area is in the same situation with regard to conflicts with halibut openings as the Sand Point area in the above paragraph. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the Pacific halibut fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

Classification

The Council prepared an environmental assessment (EA) for the FMP amendments and this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council (see **ADDRESSES**) and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR prepared for this proposed rule. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. More than 2,000 vessels may fish for groundfish off Alaska in 1992 and future years. This proposed rule is expected to have positive economic effects by allowing vessel operators to test their gear and have it in operating condition for the beginning of the trawl season. This opportunity is expected to improve fishing efficiency and reduce costs resulting from lost time due to inoperative fishing gear during the season. A copy of this analysis is available from the Council (see **ADDRESSES**).

NMFS has determined that none of the management measures proposed under this rule would adversely affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the adoption of these FMP amendments or their implementing rules.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.

Dated: December 8, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 3510-22-M

Note Fig. 1 will not appear in the Code of Federal Regulations

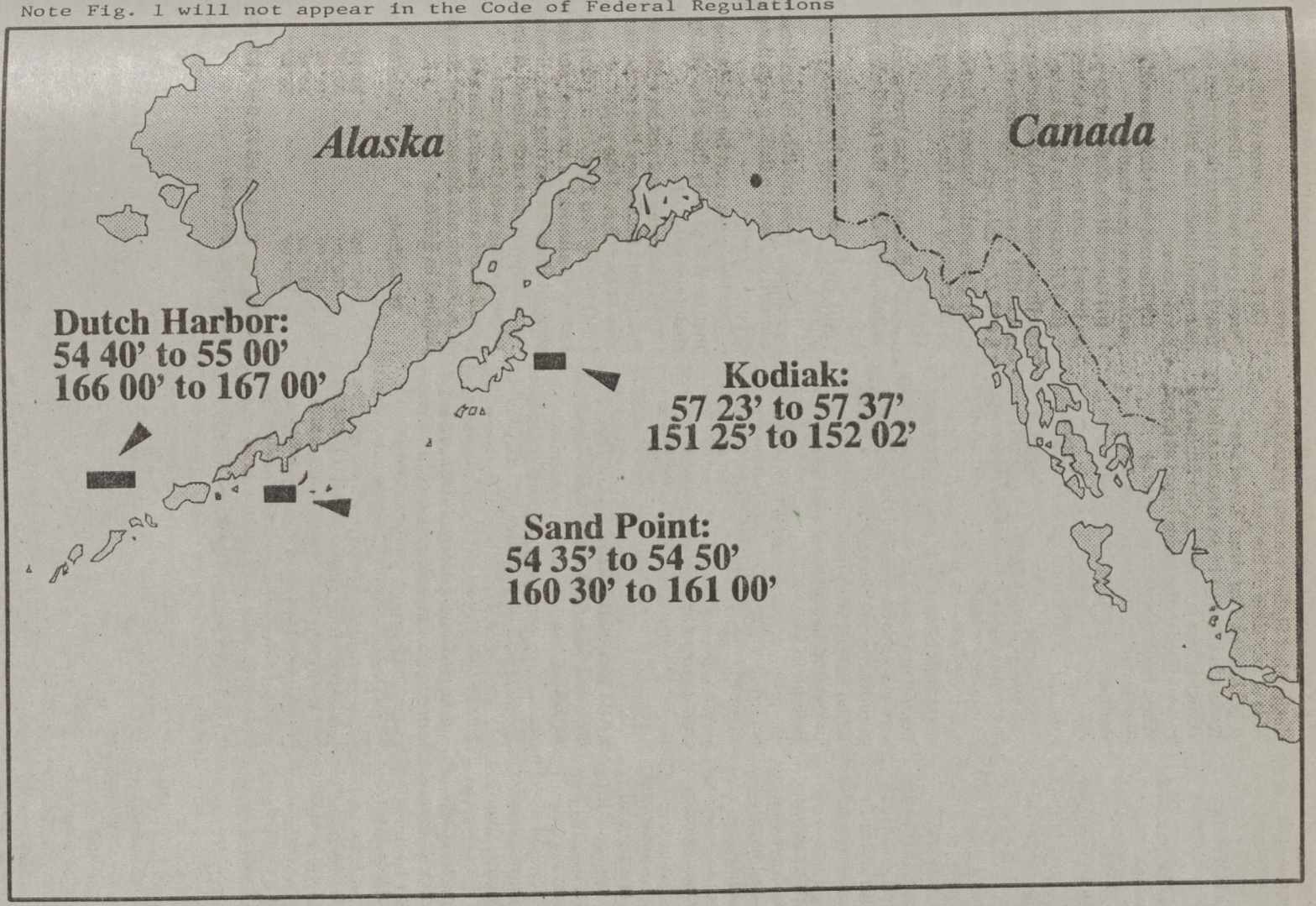


FIG 1 - LOCATION OF PROPOSED TRAWL TEST AREAS IN THE GULF OF ALASKA AND BERING SEA

BILLING CODE 3510-22-C

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.24, paragraph (f) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(f) *Trawl Gear Test Areas.* (1) *General.* For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at § 672.27.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year .

(4) *Kodiak Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 63 as defined in § 672.2:

W. longitude	N. latitude
152° 02′	57° 37′
151° 25′	57° 37′
151° 25′	57° 23′
152° 02′	57° 23′
152° 02′	57° 37′

(5) *Sand Point Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 61 as defined in § 672.2:

W. longitude	N. latitude
161° 00′	54° 50′
160° 30′	54° 50′
160° 30′	54° 35′
161° 00′	54° 35′
161° 00′	54° 50′

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.24, paragraph (g) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(g) *Trawl Gear Test Areas.* (1) *General.* For purposes of allowing pelagaic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at § 672.27 of this part.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Bering Sea Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in the Bering Sea and Aleutian Islands Management Area as defined in § 675.2:

W. longitude	N. latitude
167° 00′	55° 00′
166° 00′	55° 00′
166° 00′	54° 40′
167° 00′	54° 40′
167° 00′	55° 00′

[FR Doc. 92–30214 Filed 12–9–92; 1:16 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: M. Ann Whitehead, Patent Coordinator, USDA, ARS, room 403, Bldg. 005, BARC–West, Beltsville, Maryland 20705; (301) 504–6786 or Fax (301) 504–5060. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia, 22161; NTIS Sales Desk (703) 487–4650. Issued patents may be obtained from the Commission of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

7–519,197 (U.S. 5,122,188) Vegetable Oil-Based Printing Ink.
7–912,447 Campy-Cefex Selective and Differential Medium for *Campylobacter.*
7–921,173 Probiotic for Control of Salmonella.
7–936,423 Portable Intron as an Insertion Vector for Gene Insertion.
7–937,634 Oxidative Bleaching of Wood Pulp by Vanadium-Substituted Polyoxometallates.
7–937,764 Fungus-Bioregulator Composition and Methods for Control of Plant Parasitic Nematodes.
7–939,764 Compost Toilet Mixing Tool.
7–965,308 A Stable Beverage Clouding Agent Prepared from Isolated Soy Protein.

M. Ann Whitehead,
National Patent Coordinator.

[FR Doc. 92–30208 Filed 12–11–92; 8:45 am]
BILLING CODE 3410–03–M

Food Safety and Inspection Service

[Docket No. 92–028N]

Congressionally-Mandated Exemption Studies

AGENCY: The Food Safety and Inspection Service, USDA.

ACTION: Notice of study commencement; request for public participation.

SUMMARY: The Food Safety and Inspection Service has commenced two exemption studies pursuant to a congressional mandate. The first study will examine present and future exemptions from Federal inspection requirements for specified products; the second will consider the appropriateness of exempting from inspection certain types of wholesale meat and poultry processing. These reports will be submitted to Congress on or before December 13, 1993. Public participation in the form of written comments is encouraged.

DATES: Written comments should be submitted by mail or FAX on or before: February 12, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Jane R. Roth, Director, Policy Analysis Unit, Policy Evaluation and Planning Staff, FSIS, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–6735 or FAX (202) 690–1030.

SUPPLEMENTARY INFORMATION:

Public Participation

All parties with an interest in the issues these studies raise are invited to submit written comments explaining their position and, where appropriate, make recommendations for consideration by this Agency. In particular, FSIS is interested in potential economic impacts and health-related scientific criteria that should be evaluated during the conduct of these exemption studies. Written comments should refer to docket number 92–028N. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 4 p.m., Monday through Friday.

Background

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (section 1016, Pub. L. 101–237; approved December 13, 1991) amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) and commissioned two studies. The first is referred to as the "Product Exemption Study." The second is referred to as the "Wholesale Exemption Study." Study requirements as set forth in the amendments are as follows:

Product Exemption Study

"A study to develop criteria for, and evaluate, present and future inspection exemptions for meat food products and poultry products under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), respectively, which shall examine the potential effect on consumers, on the affected industries, on public health and food safety, on the role of the Department of Agriculture, and the scientific basis for the exemptions."

Wholesale Exemption Study

"A study of the appropriateness of granting an exemption from the requirements of the Federal Meat Inspection Act or the Poultry Products Inspection Act, as appropriate, for wholesale meat outlets selling to hotels, restaurants, or other similar institutional users, provided that the processing of meat by the outlets is limited to cutting, slicing, grinding, or repackaging into smaller quantities."

Commencement of the Studies

Work on these studies has begun. They are being conducted concurrently. FSIS will consult with the National Academy of Sciences before finalizing study results. Reports of the studies will

be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than December 13, 1993.

Done at Washington, DC, on December 8, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-30321 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Exemption of Basin Salvage Timber Sale From Appeal, Okanogan National Forest, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMAMRY: This is a notification that the decision to implement the Basin Salvage Timber Sale at the base of Mt. Annie on the Okanogan National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: December 14, 1992.

FURTHER INFORMATION CONTACT: Elaine Zieroth, District Ranger, Tonasket Ranger District, Okanogan National Forest, 1 West Winesap, Tonasket, Washington 98855, Phone (509) 486-2186.

SUPPLEMENTARY INFORMATION: The Basin Salvage Area consists of 168 acres of primarily lodgepole pine with inter-mixed western larch and Douglas-fir. A population of mountain pine beetles have been present in the area for the past two to three years as evidenced by the past mortality which is present in patches throughout. It appears, that as the lodgepole pine in the area grow to a larger diameter, the population of beetles has been expanding taking advantage of the more favorable, larger diameter trees. In June-October 1992, an interdisciplinary team (IDT) analyzed the infested area to assess the current and potential damage to the resources that had or may occur. The IDT observed that conditions throughout the analysis area are very favorable to the continued expansion of the beetle population. The trend observed appeared to show that in the past three years the population has expanded almost exponentially in numbers and area and seemed to be reaching a critical level.

The IDT identified the need to salvage the timber which has already died and to use an integrated pest management (IPM) process in order to reduce losses from the mountain pine beetle to a tolerable level. Logging before the beetle completes another life cycle and the existing brood, which is over-wintering in the stems of currently dead trees, emerges will minimize attacks on currently healthy trees. This "preventive" IPM system is the best approach to limiting the mountain pine beetle population expansion because the techniques are more effective, economical, environmentally acceptable, and compatible with management for other forest resources.

The IDT developed different alternatives to analyze the effects of no action and implementation of possible salvage opportunities. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 2) would implement stocking reductions over approximately 168 acres of land heavily infected and at an extreme high risk of further infection. This harvest would produce about 1.9 million board feet (MMBF) of merchantable volume for local markets. Approximately .57 miles of logging roads would be constructed in order to access the area and then obliterated after log haul and harvest use.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible, limit the amount of merchantable salvage volume lost to mortality, to minimize the population growth of the mountain pine beetle, and to reduce the impacts that any further expansion of this population would have to the surrounding area and affected forest resources. To expedite this sale project and the accompanying work, this project is exempted from appeals (36 CFR 217). Under this Regulation, the following is exempt from appeal.

Decisions related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, this Decision Notice for the Basin Salvage Timber Sale may be signed by the District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: December 8, 1992.

Michael S. Edrington,

Acting Deputy Regional Forester.

[FR Doc. 92-30227 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Lone Pine Recovery Project Timber Salvage and Connected Activities, Fire Interpretation, Soil and Water Protection and Improvement, Wildlife Habitat Improvement, Sensitive Plant Enhancement From Appeal, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement Lone Pine Recovery Projects in the area of Lone Pine on the Winema National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Bob Castaneda, Forest Supervisor, Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601, Phone (503) 883-6714.

SUPPLEMENTARY INFORMATION: The projects proposed for the Lone Pine recovery include: Timber salvage of fire killed timber; reforestation of conifer and forage species; interpretation and education opportunities; soil and water protection and improvement; wildlife habitat improvement, and fall antelope bitterbrush seeding all aimed at initiating recovery of the Lone Pine Fire which occurred on the Winema National Forest in August 1992. The fire severely burned more than 25,000 acres of National Forest land, killing most of the timber and other vegetation.

Shortly after the fire occurred, an Interdisciplinary Team (IDT) was organized to conduct an environmental analysis for the recovery of the fire area. The IDT began with an initial scoping meeting on August 24, 1992. After public meetings, press releases, and contacts with individuals, environmental and timber industry groups, Federal, State, County and Tribal governments, three urgent concerns were identified. They are:

(1) Expedite economic and resource value recovery of the fire killed timber before it's value deteriorates;

(2) Accomplish the greatest amount of salvage harvest possible during the 1993 winter logging season; and

(3) Implement reforestation of conifer and forage species as quickly as possible.

The action alternatives for the timber salvage will be considering the salvage of an estimated 90 million board feet of timber covering approximately 18,000 acres. Ponderosa pine is the predominant (90%) fire killed timber species, and is subject to a high loss of economic and resource value (30 to 50% by mid summer 1993), due to blue stain fungus. Expediting economic and resource value recovery of the ponderosa pine is critical to maximize:

1. Utilization of the raw material before it deteriorates.
2. Economic value to support local and regional economies.
3. Timber sale receipts for the greatest return to the Federal and County Governments, and sufficient funds derived from the timber sale receipts to pay for area recovery projects in addition to reforestation.

The environmental analysis also supports the need to complete the greatest amount of harvest possible during the 1993 winter logging season. Logging over sufficiently frozen, snow covered soils has proven to be an effective means of diminishing impacts on soil and other resources, resulting in greater protection of those resources. Normally timber sales have two or more winter logging seasons. In the case of Lone Pine fire salvage, the second winter logging season would see a large loss of economic and timber resource value (50% or more). A delay beyond the 1993 winter logging season will compress logging activities into the less desirable spring and summer months.

Reforestation of the fire area is crucial to it's recovery. Conifers and forage need to be re-established early on to begin the process of returning the area to the desired future condition, and to provide critical hiding/thermal cover and forage for mule deer and other wildlife. The fire severely damaged important winter range and fawning habitat. This important habitat needs to be rehabilitated as soon as possible. The ground is presently in a prime condition for reforestation. Conifer and forage species have their best chance for survival before the inevitable competing vegetation becomes established.

Surplus conifer and forage seedlings have been located, and are available for planting in the spring of 1993. In order to utilize the available seedlings, planting areas must be logged prior to the spring planting season. The optimum situation for reforestation in the Lone Pine Fire Area, is completion of harvest over a sufficient number of acres, to utilize as much of the available seedlings as possible in the 1993 spring planting season.

Other projects planned for the burned area include:

—Soil and water protection and improvement (grass seedings, straw check dams, road drain dip construction).
—Interpretation and education opportunities for the public of fire related management activities (interpretation signs and turnout areas)
—Wildlife habitat improvement projects (regeneration of Klamath Plum, Mountain Mahogany planting, aspen stand protection, water guzzlers, regeneration of woody shrug species, and removal of burned fencing).
—Sensitive plant enhancement (22 acres).

In summary, the reasons for exempting the Lone Pine Recovery Projects from administrative appeal are:

1. To expedite economic and resource value recovery of the fire killed ponderosa pine, to avoid deterioration of it's resource and economic value as a result of blue stain fungus.
2. To complete the greatest amount of harvest possible during the 1993 winter logging season to diminish impacts on soil and other resource values.
3. To implement reforestation of conifer and forage seedlings in the 1993 spring planting season, to utilize available surplus seedlings, begin recovery of the fire area toward the desired future condition, and re-establish critical cover and forage vegetation for mule deer and other wildlife species.

The environmental analysis of the Lone Pine Recovery Project is nearly completed. The project and accompanying work in designed to accomplish the objective as quickly as possible and minimize the amount of economic and resource value lost. To expedite these recovery projects, they are exempted from appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notice for the Lone Pine Recovery Project Timber Salvage and Connected Activities and Decision Memos for Soil and Water Protection and Improvement, Fire Interpretation, Wildlife Habitat Improvement, and Sensitive Plant Enhancement may be signed by the Winema Forest Supervisor. Therefore, these projects will not be subject to review under 36 CFR part 217.

Dated: December 7, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-30224 Filed 12-11-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Technology: Prevalence and Plans for Use.

Form Number(s): SMT–1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,500 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census will conduct the Survey of Technology: Prevalence and Plans for Use to measure patterns of use and diffusion of advanced manufacturing technologies. The Survey of Manufacturing Technology, conducted in 1988, provided valuable data on the diffusion of advanced technology as well as the characteristics of the establishments that incorporate technologically advanced equipment in their operations. Using data gathered in this survey, Census will evaluate the extent to which the rate of technology usage has changed over time and will determine the factors that influence decisions to acquire advanced technology. The International Trade Administration will use the data in comparing domestic manufacturers' level of technology to that of other countries as well as in appraising charges of unfair trade practices. The Department of Defense (DOD) will use the information to measure the mobilization capabilities and flexibility of our manufacturing industries. In addition, the DOD and the National Institute of Standards and Technology will use the data to more efficiently allocate resources from their technology demonstration and transfer programs.

Affected Public: Business or other for profit organizations.

Frequency: Triennially.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–30305 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Amendment to final results of antidumping duty administrative reviews.

SUMMARY: On June 24, 1992, the Department of Commerce published the final results of its 1990–91 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 63 manufacturers/exporters and the period May 1, 1990 through April 30, 1991. Based on the correction of clerical errors, we have changed the margins for ball bearings for 17 companies, and for cylindrical roller bearings for one company

EFFECTIVE DATE: December 11, 1992

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger or Bernard Carreau, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 28360) the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered rolled bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 63 manufacturers/exporters and the period May 1, 1990 through April 30, 1991.

After publication of our final results, we received in a timely fashion allegations of clerical errors from the petitioner, the Torrington Company, and from several respondents: Barden, FAG, FiatAvio, IJK, INA, Koyo, MBB, NSK, Pratt & Whitney, SKF, and SNR. In most instances, we agree with the allegations and have made corrections where appropriate.

On July 24, 1992, the Department published in the **Federal Register** (57 FR 32969) an amendment to the final results of these administrative reviews. However, because Federal-Mogul Corporation, a domestic interested party, and NTN Corporation, a Japanese exporter, had each filed a summons at the Court of International Trade (CIT), we did not issue clerical error corrections with respect to BBs from France, Germany, Italy, Japan, Sweden and the United Kingdom, as well as CRBs from Japan at that time. In accordance with *Zenith Elec. Corp.* v. *United States*, 699 F.Supp 296 (CIT 1988), *Aff'd*, 884 F.2d 556 (Fed. Cir. 1989), the Department could not automatically correct ministerial errors made in an administrative review once the court's exclusive jurisdiction had been invoked.

On November 23, 1992, the CIT granted the Department leave to correct the clerical errors for those countries and classes or kinds of merchandise under the court's jurisdiction.

Amended Final Results of Review

The Department inadvertantly excluded the word "not" from the response to Comment 20 found at the top of the first column on 57 FR 28418. The second sentence in the Department's response should read, "However, we agree with Torrington that NSK's early payment discounts or distributor incentives are *not* included as expenses in its COP data."

In its calculations of dumping margins, the Department corrected ministerial errors concerning the following:

France

For Pratt & Whitney, we corrected the application of a level of trade adjustment to home market unit prices that were adjusted for discounts and rebates rather than to Pratt & Whitney's gross unit price.

For SKF, we corrected home market commissions that were set to zero and treated warranty and technical service expenses as direct expenses.

For SNR, we eliminated the double-counting of commissions and U.S. inland freight expenses, corrected a typographical error in connection with domestic inland insurance and implemented a variable for physical differences in merchandise.

Germany

For FAG, we eliminated home market family matches where all sales were below cost, corrected the setting of some indirect selling expenses to zero and eliminated the addition of imputed credit costs and inventory carrying costs to cost of production for the home market cost test. We also eliminated adjustments for differences in merchandise and corrected the failure to include home market inventory carrying costs for some constructed value comparisons.

For Pratt & Whitney, we corrected the application of a level of trade adjustment to home market unit prices that were adjusted for discounts and rebates rather than to Pratt & Whitney's gross unit price.

For SKF, we subtracted (rather than added) a billing adjustment from indirect selling expenses and deleted the billing adjustment from adjusted home market price when applying the sales below cost test. We also corrected the treatment of warranty and technical service expenses as both direct and indirect expenses by treating them as direct expenses.

Italy

For FAG, we corrected the inclusion of inventory carrying costs and credit expenses in cost of production, the application of an adjustment for differences in merchandise to constructed value comparisons, the exclusion of home market indirect

selling expenses from constructed value margin calculations and the double-counting of inventory write-offs in calculating cost of production.

For SKF, we subtracted (rather than added) a billing adjustment from indirect selling expenses and deleted the billing adjustment from adjusted home market price when applying the sales below cost test. We also corrected the treatment of warranty and technical service expenses as both direct and indirect expenses by treating them as direct expenses.

Japan

For IJK, we corrected the calculation of constructed values that used purchase prices that were incorrect by a factor of 100 due to a computer tape formatting error. We also corrected the failure to apply the 20 percent difference in merchandise "cap" to IJK's transactions.

For Koyo, we corrected the failure to apply the intended best information available for U.S. sales for which Koyo failed to provide cost of production data for matching home market sales.

For Nachi, we corrected the failure to apply the ten percent minimum for general expenses and eight percent minimum for profit when calculating constructed value.

For NSK (ball bearings), we corrected the basing of presale U.S. inland freight expenses on an incorrect price, the exclusion of home market indirect selling expenses from the appropriate variable, the placement of consecutive plus signs in the string of variables used to determine United States direct selling expenses, the treatment of NSK's inventory carrying costs and technical service expenses as direct selling expenses rather than indirect selling expenses, the failure to convert presale inland freight expenses for purchase price sales from yen to dollars and the failure to apply the 20 percent difference in merchandise "cap" to NSK's transactions.

For NSK (cylindrical roller bearings), we corrected the exclusion of home market indirect selling expenses from the appropriate variable, the placement of consecutive plus signs in the string of variables used to determine United States direct selling expenses, the treatment of NSK's inventory carrying costs and technical service expenses as direct selling expenses rather than indirect selling expenses, and the failure to apply the 20 percent difference in merchandise "cap" to NSK's transactions.

For NTN, we corrected the failure to convert the price used to calculate the level of trade adjustment from yen to dollars and the failure to apply the ten percent minimum general expenses in calculating constructed value.

Sweden

For SKF, we corrected the treatment of some selling expenses as if reported in Swedish kronor rather than the correct currency of Deutsche marks and the treatment of warranty and technical service expenses as both direct and indirect expenses.

United Kingdom

For Barden, we corrected the addition of the value-added tax percentage to U.S. and home market prices rather than the addition of the result of multiplying the tax percentage by the U.S. price.

For FAG, we corrected the addition of the value-added tax percentage to U.S. and home market prices rather than the addition of the result of multiplying the tax percentage by the U.S. price. We also corrected the failure to apply the 20 percent difference in merchandise "cap" and the failure to deduct commissions from U.S. price.

For SKF, we corrected the double-counting of movement expenses, the treatment of warranty and technical service expenses as both direct and indirect expenses, the subtraction of "other discounts" twice from U.S. price and the addition of the value-added tax percentage to U.S. and home market prices rather than the addition of the result of multiplying the tax percentage by the U.S. price.

The Department also determined that there was no clerical error made with respect to FAG Cuscinetti's home market inventory carrying costs. Therefore, no correction was made.

As a result of our corrections of clerical errors, we have determined the following weighted-average margins to exist for the period May 1, 1990 through April 30, 1991:

Country	Company	Class or kind	Rate
France	Pratt & Whitney.	BBs	9.37
	SKF	BBs	8.37
	SNR	BBs	15.96
	All others	BBs	15.96
Germany	FAG	BBs	17.24
	Pratt & Whitney.	BBs	11.10
	SKF	BBs	11.44
	All others	CRBs	23.52
Italy	FAG	BBs	4.94
	SKF	BBs	9.31
Japan	IJK	BBs	1.43
	Koyo	BBs	6.85
	Nachi	BBs	7.86
	NSK	BBs	4.62
		CRBs	12.69
	NTN	BBs	2.26
Sweden	SKF	BBs	7.81
	All others	BBs	7.81
United Kingdom	Barden	BBs	0.74
	FAG	BBs	41.99
	SKF	BBs	8.41
	All others	BBs	41.99

Based upon these rates, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties and to assess antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews (57 FR 28361).

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: December 8, 1992.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-30306 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 921074-2274]

RIN 0693-AB11

Two Proposed Federal Information Processing Standards; Integration Definition for Function Modeling; Integration Definition Information Modeling

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The purpose of this notice is to announce two proposed Federal

Information Processing Standards (FIPS) for software modeling techniques. These proposed standards will enable Federal agencies to improve information resources management through the development and acquisition of vendor-independent and application-independent systems for modeling information system functions and for analyzing data resources.

The proposed FIPS for Integration Definition for Function Modeling (IDEF0) is based on the Air Force Wright Aeronautical Laboratories Integrated Computer Aided Manufacturing (ICAM) Architecture, Part II, Volume IV—Function Modeling Manual. This standard describes the IDEF0 modeling language (semantics and syntax) and associated rules and techniques for developing structured graphical representations of a system or enterprise.

The proposed FIPS for Integration Definition Modeling (IDEF1X) is based on the Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, 1. This standard describes the IDEF1X modeling language (semantic and syntax) and associated rules and techniques, for developing a logical model of data.

Prior to the submission of these proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

The proposed standards contain two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standards; and (2) a specifications section which deals with the technical requirements of the standards. Only the announcement sections of the standard are provided in this notice. Interested parties may obtain copies of the technical specifications from the Standards Processing Coordinator (ADP), National Institute of Standards Processing coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on these proposed FIPS must be received on or before March 15, 1992.

ADDRESSES: Written comments concerning these proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for IDEF0 and IDEF1X, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments concerning these proposed FIPS will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Gunn, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–3260.

John W. Lyons,

Director.

Dated: December 8, 1992.

Draft Federal Information Processing Standards Publication _____

(Date)

Announcing the Standard for Integration Definition for Function Modeling Manual (IDEF0)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Integration Definition for Function Modeling (IDEF0).

2. Category of Standard. Software Standard, Modeling Techniques.

3. Explanation. This publication announces the adoption of the Integration Definition Function Modeling (IDEF0) as a Federal Information Processing Standard (FIPS). This standard is based on the Air Force Wright Aeronautical Laboratories Integrated Computer-Aided Manufacturing (ICAM) Architecture, Part II, Volume IV–Function Modeling Manual (IDEF0), June 1981.

This standard describes the IDEF0 modeling language (semantics and syntax), and associated rules and techniques, for developing structured graphical representations of a system or enterprise. Use of this standard permits the construction of models comprising system functions (activities, actions, processes, operations), functional relationships, and data (information or objects) that support systems integration.

This standard is the reference authority for use by system or enterprise modelers required to utilize the IDEF0 modeling technique, by implementors in developing tools for implementing this technique, and by other computer professionals in understanding the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. ICAM Architecture Part II-Volume IV-Function Modeling Manual (IDEF0), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

7. Related Documents

a. Federal Information Resources Management Regulations Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. Integrated Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, December 1985.

c. ICAM Architecture Part II, Volume V—Information Modeling Manual (IDEF1), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

d. ICAM Configuration Management, Volume II—ICAM Documentation Standards for Systems Development Methodology (SDM), AFWAL–TR–82–4157, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, October 1983.

8. Objectives. The primary objectives of this standard are:

a. To provide a means for completely and consistently modeling the functions (activities, actions, processes, operations) required by a system or enterprise, and the functional relationships and data (information or objects) that support the integration of those functions;

b. To provide a modeling technique which is independent of Computer-Aided Software Engineering (CASE) methods or tools, but which can be used in conjunction with those methods or tools;

c. To provide a modeling technique that has the following characteristics:

(1) Generic (for analysis of systems of varying purpose, scope and complexity);

(2) Rigorous and precise (for production of correct, usable models);

(3) Concise (to facilitate understanding, communication, consensus and validation);

(4) Conceptual (for representation of functional requirements rather than physical or organizational implementations);

(5) Flexible (to support the full life cycle of a project).

9. Applicability.

Implementations of this standard are required in information resource management applications that are either developed or acquired for Federal Government use. Such applications include:

a. Using a modeling technique for the analysis, development, re-engineering, or integration of information systems;

b. Incorporating a system or enterprise modeling technique into a systems analysis or software engineering methodology.

The use of this standard is strongly recommended for all projects requiring a standard means of defining and analyzing the functions and associated data within an organization.

The specifications of this standard are applicable when system or enterprise modeling techniques are applied to the following:

a. Projects requiring IDEF0 as the modeling technique;

b. Development of automated software tools implementing the IDEF0 modeling technique.

The specifications of this standard are not applicable to those projects requiring a function modeling technique other than IDEF0.

Nonstandard features of the IDEF0 technique should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the integration of models more difficult and costly.

10. Specifications. This standard adopts the Integration Definition for Function Modeling (IDEF0) as a Federal Information Processing Standard (FIPS).

11. Implementation. The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretation of the standard.

11.1 Acquisition of IDEF0 Implementations. This publication (FIPS XXX) is effective XXXX XX, 199X (six months after date of publication of the final document in the Federal Register). For Federal acquisitions after this date, projects utilizing the IDEF0 function modeling technique, or software implementing the IDEF0 modeling technique, should conform to FIPS XXX. Conformance to this standard should be considered whether the project or software utilizing the IDEF0 modeling technique is acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to develop products conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, utilizing a function modeling technique that does not conform to this standard may be permitted during the transition period.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions regarding the implementation and applicability of this FIPS. All questions concerning the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS IDEF0 Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required findings(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, Attn: FIPS Waiver Decisions, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee of Government Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Draft Federal Information Processing Standards Publication _____

(Date)

Announcing the Standard for Integration Definition for Function Modeling (IDEF1X)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Integration Definition for Information Modeling (IDEF1X).

2. Category of Standard. Software Standard, Modeling Techniques.

3. Explanation. This publication announces the adoption of the Integration Definition for Information Modeling (IDEF1X) as a Federal Information Processing Standard (FIPS). This standard is based on the Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended, 1 (IDEF1X) November 1985.

This standard describes the IDEF1X modeling language (semantics and syntax) and associated rules and techniques, for developing a logical model of data. IDEF1X is used to produce a graphical information model which represents the structure and semantics of information within an environment or system. Use of this standard permits the construction of semantic data models which may serve to support the management of data as a resource, the integration of information systems, and the building of computer databases.

This standard is the reference authority for use by information modelers required to utilize the IDEF1X modeling technique, implementors in developing tools for implementing this technique, and other computer professionals in understanding the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. Integration Information Support System (IISS), Volume V—Common Data Model Subsystem, Part 4—Information Modeling Manual—IDEF1 Extended.

7. Related Documents.

a. Federal Information Resources Management Regulations Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. ICAM Architecture Part II-Volume V—Information Modeling Manual (IDEF1), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

c. ICAM Architecture Part II-Volume IV—Function Modeling Manual (IDEF0), AFWAL–TR–81–4023, Materials Laboratory, Air Force Wright Aeronautical Laboratories, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, June 1981.

d. ICAM Configuration Management, Volume II—ICAM Documentation Standards for Systems Development Methodology (SDM), AFWAL–TR–82–4157, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio 45433, Ohio 1983.

8. Objectives. The primary objectives of this standard are:

a. To provide a means for completely understanding and analyzing an organization's data resources;

b. To provide a common means of representing and communicating the complexity of data;

c. To provide a technique for presenting an overall view of the data required to run an enterprise;

d. To provide a means for defining an application-independent view of data which can be validated by users and transformed into a physical database design;

e. To provide a technique for deriving an integrated data definition from existing data resources.

9. Applicability. An information modeling technique is used to model data in a standard, consistent, predictable manner in order to manage it as a resource.

Implementations of this standard are required in information resource management applications that are either developed or acquired for Federal Government use. Such applications include:

a. Incorporating a data modeling technique into a methodology;

b. Using a data modeling technique to manage data as a resource;

c. Using a data modeling technique for the integration of information systems;

d. Using a data modeling technique for designing computer databases.

The use of this standard is strongly recommended for all projects requiring a standard means of defining and analyzing the data resources within an organization.

The specifications of this standard are applicable when a data modeling technique is applied to the following:

a. Projects requiring IDEF1X as the modeling technique;

b. Development of automated software tools implementing the IDEF1X modeling technique.

The specification of this standard are not applicable to those projects requiring data modeling technique other than IDEF1X.

Nonstandard features of the IDEF1X technique should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the integration of data models more difficult and costly.

10. Specifications. This standard adopts the Integration Definition Method for Information Modeling (IDEF1X) as a Federal Information Processing Standard (FIPS).

11. Implementation. The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretation of the standard.

11.1 Acquisitions of IDEF1X Implementations. This publication (FIPS XXX) is effective XXXX XX, 199X (six months after date of publication of the final document in the **Federal Register**). Projects utilizing the IDEF1X data modeling technique, or software implementing the IDEF1X data modeling technique, acquired for Federal use after this date should conform to FIPS XXX. Conformance to this standard should be considered whether the project utilizing the IDEF1X data modeling technique is acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts of programming services.

A transition period provides time for industry to develop products conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, utilizing an IDEF1X information modeling technique that does not conform to this standard may be permitted during the transition period.

11.2 Interpretation of this FIPS. NIST provides for the resolution of questions regarding the implementation and applicability of this FIPS. All questions concerning the interpretation of IDEF1X should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS IDEF1X Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by governmentwide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, Attn: FIPS Waiver Decisions, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of

the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 92-30312 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-CN-M

National Institute of Standards and Technology

[Docket No. 910527-2215]

RIN 0693-AA85

Approval of Federal Information Processing Standards Publication 179, Government Network Management Profile (GNMP)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 179.

SUMMARY: On July 31, 1991, (56 FR 36136) and August 12, 1991 (56 FR 38174) notices were published in the Federal Register that a Federal Information Processing Standard for GNMP was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective June 14, 1993.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Ms. Fran Nielsen, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3669.

Dated: December 8, 1992.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 179

(date)

Announcing the Standard for Government Network Management Profile (GNMP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Government Network Management Profile (GNMP) (FIPS PUB 179).

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard adopts the Version 1.0 GNMP. The Government Network Management Profile (GNMP) specifies the common management information exchange protocol and services, specific management functions and services, and the syntax and semantics of the management information required to support monitoring and control of the network and system components and their resources.

The GNMP builds on FIPS 146-1, Government Open Systems Interconnection Profile (GOSIP), and includes the GOSIP Version 2.0 by reference. The GOSIP specifies lower layers protocols and three applications that support general network management operations. Future versions of the GNMP will add network management functions and services for GOSIP-compliant end systems and intermediate systems. The GNMP and GOSIP are interrelated and will cross-reference each other as required.

The primary source of specifications in the Version 1.0 GNMP is part 18 of the OIW Stable Implementation Agreements, June 1992, developed by the Open Systems Environment Implementors Workshop sponsored by NIST and IEEE Computer Society. This source provides implementation specifications for network management based on the service and protocol standards issued by the ISO.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. *Cross Index.*

a. NBS Special Publication 500-202, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 5, Edition 1, NIST Workshop for Implementors of Open Systems Environment, June 1992.

b. FIPS PUB 146-1, Government Open Systems Interconnection Profile (GOSIP).

7. *Related Documents.* Related documents are listed in the Reference Section of the GNMP document.

8. *Objectives.* The primary objectives of this standard are:

—to achieve interconnection and interoperability of computers and systems that are acquired from different manufacturers in an open systems environment;

—to reduce the costs of computer network systems by increasing alternative sources of supply;

—to facilitate the use of advanced technology by the Federal Government;

—to stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards.

9. *Specifications.* GNMP (affixed).

10. *Applicability.* GNMP shall be used by Federal Government agencies when acquiring network management functions and services for computer and communications systems and networks.

11. *Implementation.* This standard is effective June 14, 1993. For a period of 18 months after the effective date, agencies are permitted to acquire

alternative network management functions and services which provide equivalent functionality to this standard. Agencies are encouraged to use this standard for solicitations and contracts for new network management functions and services to be acquired after the effective date. This standard is compulsory and binding for use in all solicitations and contracts for new network management functions and services to be acquired 18 months after the effective date. Additional management support functions will be added to GNMP as implementation specifications for these functions are developed by the NIST Workshop for Implementors of OSI. For a period of 18 months after these new functions are included in GNMP, agencies are permitted to acquire alternative functions and services which provide equivalent functionality. After the 18-month period, the new functions and services should be cited in solicitations and contracts when systems to be acquired provide equivalent functionality to the protocols defined in the GNMP document.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offer of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting document, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency

13. *Special Information.* The GNMP is being developed in phases. Version 1.0 GNMP specifies the initial phase of the GNMP. Additional management capabilities and managed objects will be included in subsequent releases of the profile. Eventually, as the NM standards all reach technical maturity, the GNMP will embrace the full set of management functionality.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 179 (FIPSPUB179), and title. Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 92–30313 Filed 12–11–92; 8:45 am]
BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary: Petition to Suspend, Reconsider and Repeal Those Portions of the Monterey Bay National Marine Sanctuary Regulations Restricting the Use of Motorized Personal Water Craft

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition.

SUMMARY: NOS has received a petition, pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), from the Personal Watercraft Industry Association to suspend, reconsider and repeal those portions of the Monterey Bay National Marine Sanctuary regulations that restrict the use of motorized personal water craft to four areas within the Sanctuary.

FOR FURTHER INFORMATION CONTACT: Rafael V. Lopez, Pacific Regional Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235, (202/606–4126).

SUPPLEMENTARY INFORMATION: On September 18, 1992, NOAA published the final rule the Monterey Bay National Marine Sanctuary (57 FR 43310). The rule will become effective on January 1, 1993 (57 FR 55444, November 25, 1992). On November 17, 1992, NOAA received a petition from the Personal Watercraft Industry Association, whose member companies include Arctco, Inc., Kawasaki Motors Corp., U.S.A., Yamaha Motor Corp., U.S.A., WetJet International Ltd., and SurfJet International Ltd., requesting that NOAA: "Initiate rulemaking proceedings to reconsider and repeal those provisions of the recently-promulgated rule which restrict only the use of personal watercraft within the Monterey Sanctuary; Expressly acknowledge that (1) there is currently no basis for distinguishing between personal watercraft and other motorized vehicles with respect to any potential threat posed to Sanctuary resources, and (2) there is no basis for concluding that personal watercraft pose any actual threat to the Sanctuary; and Act expeditiously to suspend the application of the recently-promulgated personal watercraft restrictions, pending completion of the requested rulemaking proceedings." NOS is reviewing the petition and will notify the petitioner of its decision to proceed or not to proceed with the rulemaking suggested by the petition within 120 days of receipt of the petition. A notice of NOS's decision will also be published in the Federal Register.

If NOS decides not to open rulemaking proceedings, NOS will provide the petitioner with a brief statement of grounds for its decision. If NOS decides to open rulemaking proceedings, then the public will be provided with an opportunity to comment on the proposed rulemaking in accordance with the procedures of the Administrative Procedure Act. Public comments are not requested at this time.

Dated: December 9, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92–30273 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Correction

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of correction regarding application for scientific research permit (P523).

SUMMARY: This notice revises the fifth paragraph of a notice previously published in the **Federal Register** on November 20, 1992 (57 FR 54771) as follows:

On page 54771, column 2, the first full sentence is revised to read: "The requested animals may be approached and/or presented with sound an average of two times each annually, with some animals possibly approached or presented with sound up to four times each annually, in carrying out photo-identification and acoustic playback studies."

Dated: December 8, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30231 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits; Correction

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of correction; application for permit (P278D).

SUMMARY: This notice revises the fourth paragraph, second sentence, of a notice previously published in the **Federal Register** November 16, 1992 (57 FR 54051). The second sentence is revised to read: "An unspecified number of the listed species, in addition to Steller sea lions (*Eumetopias jubatus*) and Guadalupe fur seals (*Arctocephalus townsendi*), may be unintentionally harassed during ground and aerial surveys."

Dated: December 8, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–30230 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–22–M

Office of the General Counsel

[Docket No. 920896–2196]

Commercial Law Development Program for Central and Eastern Europe ("CLDP")

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice of the availability of funds for the CLDP Commercial Law Resident Advisor Program in Central and Eastern Europe, including the Baltic States.

SUMMARY: The Department of Commerce ("Department") Office of the General Counsel established the Commercial Law Development Program for Central and Eastern Europe ("CLDP") in January 1992, as part of the Administration's ongoing efforts to assist Central and Eastern Europe and the Baltic States in the development of a commercial infrastructure consistent with free market principles. The CLDP provides technical legal assistance to the governments of the region with respect to contract law, commercial codes, foreign and domestic investment law, commercial dispute resolution, real property rights, intellectual property rights and public procurement.

In response to the region's governments' numerous requests for U.S. on-site technical assistance with commercial law issues, CLDP will arrange for assignments (not to exceed six months) in the region of qualified U.S. legal advisors, principally from the U.S. Government, with expertise in foreign and or domestic investment law, contracts, dispute resolution, commercial codes, real or intellectual property, government procurement, or related areas of commercial law.

The first objective of CLDP's Resident Advisor Program will be the placement of resident advisors in its priority countries, which currently are Bulgaria, Poland, Lithuania, and Albania, to assist in the development of government procurement procedures, the drafting and implementation of commercial laws and regulations, and the negotiation and implementation of international economic agreements. CLDP will consider placing resident advisors in the other countries of the region after it has addressed the technical assistance needs of its priority countries. The CLDP will rely principally on government attorneys to meet the program's goals. The program reserves the right to invite or recruit Federal government attorneys to participate under non-competitive procedures.

In-country placements of U.S. commercial law advisors will range from approximately one to six month periods, depending upon the type of assistance requested by the Central and Eastern European governments. The goal of the CLDP Resident Advisor Program is to provide the governments of the region with quality, on-site, hands-on technical advice. CLDP will ensure that any CLDP assistance provided is tailored to meet the needs of the specific host government and that legislators, administrators, judges, and the private sector in the host country have the tools to build on the expert's assistance upon the expert's return to the U.S.

CLDP will place only persons who are committed to adequately prepare for their assignments and to complete appropriate follow-up activities. CLDP will screen the candidates for any in-country placement to ascertain whether they meet the criteria set forth in this Federal Register Notice and are available for assignment in a specific country for the length of time agreed upon by CLDP and the appropriate host ministry. CLDP will maintain a list of qualified advisors and make selections for in-country assignments as appropriate and reasonable requests are received from the region's governments. Final selection for any assignment in the region will be made by a panel of public and private experts knowledgeable about the subject of the proposed assignment.

U.S. commercial law experts selected for the Resident Advisor Program may be eligible to receive funds through cooperative agreements from the Department of Commerce to help defray the cost of placement.

DATES: Applications should be submitted no later than 3 p.m., on February 12, 1993.

ADDRESSES: Applications should be sent along with two (2) self-addressed mailing labels, to Susan K. Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Susan K. Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Tel: (202) 482–5382, Fax: (202) 482–3244.

SUPPLEMENTARY INFORMATION: In addition to the program description contained in the summary, the following information also applies:

I. Funding Availability

Pursuant to sections 521, 635(b) and 632(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2346, 2395(b) and 2392(b), respectively) and section (a)(1) under the heading "Assistance for Eastern Europe" of title II of the Foreign Operations, Export Financing, and Related Appropriations Act, 1991, funding for the Resident Advisor Program shall be provided by the Agency for International Development (A.I.D.). The present amount available for the in-country placement of U.S. commercial law experts is $350,000, including the funds available for placement of U.S. Government personnel, whether through the in-country placement program described herein or through other programs of the CLDP. This amount is subject to augmentation or reduction depending on the program needs.

II. Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between the Department and the recipient U.S. commercial law advisor. With funds provided by AID, the Department will reimburse experts for the roundtrip coach airfare between the U.S. and the country in which the expert is being placed upon submission to the Department of the travel invoice (Fly America act provisions apply). The recipient will be reimbursed for living expenses and incidentals according to applicable Government Travel regulations. In-country assignments are not to exceed 6 months. The Department of Commerce Travel Regulations suggest that if an advisor is placed in-country for more than 30 days that person make reasonable efforts to obtain lodging at weekly or monthly rates. The Department also will reimburse the recipient for pre-approved instructional materials. The Department will provide cash advances for such expenses as are reasonable and appropriate under the Federal Travel Regulations. All awards are expected to be made prior to March 31, 1993. Recipients are subject to Federal laws and Federal and Departmental policies and procedures applicable to financial assistance.

III. Request for Applications

To obtain a copy of the Competitive Application Kit, please send a written request with two self-addressed mailing labels to Susan K. Gurley, Commercial Law Development Program, room 3845, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each individual, but Application Kits may be reproduced by the requester.

A signed original and three copies of the Application (Standard Form 424 (Rev. 488)) and supplemental materials must be submitted to the CLDP at the address designated in the Application Kit in order for the application to be considered. Awards are expected to be made on a rolling basis. All awards are expected to be made prior to March 31, 1993.

IV. Eligibility Requirements

Eligible for financial assistance through the CLDP Resident Advisor Program in Central and Eastern Europe are persons licensed to practice law in the U.S. including individual lawyers from private law firms or companies, not-for-profit organizations, Federal, state and local government agencies, and academia.

Each application will receive an objective review by a panel of persons from the public and private sectors knowledgeable about the subject of the program. Applications will be evaluated on a competitive basis, as they are received, in accordance with the selection criteria set forth below. The Department reserves the right to reject any application and to consider other noncompetitive procedures to distribute assistance under this program as appropriate and in accordance with law.

A. Selection Criteria

Consideration for financial assistance will be given to those experts who:

Essential Criteria

1. Have a minimum of five years of practical, substantial legal experience in any of the following: company formation, governance or reorganization, foreign investment, contracts, secured transactions, commercial dispute resolution, real property, intellectual property, or government procurement;

2. Agree to adhere to CLDP conflict of interest requirements; and

3. Are able to be placed in-country during the period of time a person with their expertise has been requested by the host ministry, agree to commit a minimum of 15 hours of time (without recompense) in advance of the assignment to prepare for the work to be done in-country and a minimum of 15 hours (without recompense) after the assignment has ended to complete follow-up activities, and have expressed willingness to be placed in the country for which CLDP is making the placement in the question.

Preferred Criteria

4. Are familiar with the region either through personal, professional or educational background or experience;

5. Are proficient in one of the languages of the region;

6. Have teaching or public speaking facility or experience; and

7. Have experience in legal reform or transnational transactions and legal issues.

Out of a 100 point scale, the critical criteria account for 80 points. The preferred criteria account for 20 points. Selection criteria 1, 2, and 3 are critical elements and are weighted equally. Selection criteria 4 to 7 represent desirable, but not essential, criteria or experience for receiving grants. Selection criteria 4 to 7 are weighted equally. Applicants must provide CLDP with a summary of their educational background, work experience, and of their experience in commercial law matters, including number of years of experience, level of expertise, and any practical application in the areas of commercial law. The summary also should include, information regarding the Applicant's language proficiency, background in Eastern European matters, and teaching experience, and should indicate whether the Applicant has experience in law reform. The summary also must indicate availability (duration of availability), length of assignment preferred, and country preference, if any.

B. Conditions

All Applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either:

A. The delinquent account is paid in full,

B. A negotiated repayment schedule is established and at least one payment is received, or

C. Other arrangements satisfactory to the Department of Commerce are made.

2. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

3. All Applicants must submit a completed Form CD–511, "Certifications regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and are advised that:

A. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26,

"Nonprocurement Debarment and Suspension" and the related section of the certification form;

B. *Drug Free Workplace.* Grantees (as defined at 15 CFR part, 26 section 605) are subject to 15 CFR part 26, subpart F, "Government Wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

C. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

D. *Anti-Lobbying Disclosures.* Any Applicant who has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. False statements on the application may be grounds for denial or termination of funding, as well as potential civil and criminal liability. The Department has no further funding liability beyond the time and amount stated in the award.

5. Recipients and subrecipients of financial assistance under this program are subject to all applicable Federal laws and Federal and departmental policies, regulations, and procedures applicable to Federal financial assistance awards.

6. Standard Form 424 (Rev. 488) is subject to the Paperwork Reduction Act and has been approved by OMB.

7. The Grants Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed award may be incurred before receipt of either a fully executed cooperative agreement or a specific written authorization from the Grants Officer. If an applicant should incur any costs prior to an award being made, the applicant does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation on the part of the DOC to cover pre-award costs.

8. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

9. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the discretion of the Department of Commerce.

10. Applicants are advised that they will be subject to a name check review process. Name checks are intended to reveal if the Applicant or any key individuals associated therewith have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Recipients and subrecipients will be subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Dated: December 7, 1992.

Lynn S. West,

Deputy General Counsel.

[FR Doc. 92–30268 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–BW–M

[Docket Number 920653–2259]

Commercial Law Development Program for Central and Eastern Europe ("CLDP")

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice of the availability of funds for the CLDP Legal Intership Program.

SUMMARY: The Department of Commerce ("Department") Office of the General Counsel established the Commercial Law Development Program for Central and Eastern Europe ("CLDP") in January 1992, as part of the Administration's ongoing efforts to assist Central and Eastern Europe, and the Baltic States, in the development of a commercial law infrastructure consistent with free market principles. The CLDP provides technical assistance in the evaluation and revision of the region's commercial legal systems, with a focus on investment law, commercial dispute resolution, real property rights, intellectual property rights, and government procurement. The legal internship component of the CLDP will provide an opportunity for law students and junior attorneys from the region to serve as interns in U.S. law firms and legal offices of U.S. companies, accounting firms, and trade associations for a period of six weeks to four months in order to learn U.S. legal structures and procedures. Only attorneys with no more than five years of legal experience and law students in their final year of law school or enrolled in a graduate legal program are eligible for the internship program. All interns must be proficient in English. The CLDP Legal Internship Program will first place interns from its priority countries, which currently are Albania, Bulgaria, Poland, and Lithuania. Interns from the other countries of the region may also be placed if suitable matches are found and CLDP funding is available or unnecessary.

To ensure that the program's goals will be met, each applicant will be required to submit a plan for utilizing the U.S. experience to support commercial law reform in his or her country. The goal of the program is to provide these law students and recent law school graduates with the expertise necessary to participate in the establishment and implementation of free market legal frameworks in their countries. In addition, host firms will benefit from the program by learning more about these countries and their legal and commercial climates.

Under the CLDP Legal Internship Program, qualified U.S. law firms and the legal departments of companies, accounting firms, and trade associations will be eligible under specified circumstances to receive funds through cooperative agreements with the Department to help defray the cost of hosting an intern in the U.S. Participating U.S. firms will be expected to provide the interns with instruction in one or more of the following areas of commercial law: Commercial or financial transactions, corporate law, foreign investment law, commercial dispute resolution, real property rights, intellectual property rights, or government procurement.

CLDP also may place interns with the Eastern European legal offices of U.S. firms. U.S. firms with Eastern European legal offices interested in providing legal internships to law students and recent law school graduates are invited to participate in CLDP's "matchmaker" service. CLDP will interview candidates and recommend eligible interns for in-country placement. However, no Department funding is available for such placements, and such host firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. In addition, U.S. firms operating in the U.S. who wish to utilize the CLDP's "matchmaker" service without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

DATES: Applications should be submitted no later than 3 p.m., on February 12, 1993.

ADDRESSES: Applications should be sent, along with two self-addressed mailing labels, to Kathy Burke, International Program Assistant, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kathy Burke, International Program Assistant, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Tel: (202) 482–5382, Fax: (202) 482–3244.

SUPPLEMENTARY INFORMATION: In addition to the program description contained in the summary, the following information also applies:

I. Funding Availability

Pursuant to sections 532, 635(b) and 632(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2346, 2395(b) and 2392(b), respectively and section (a)(1) under the heading "Assistance for Eastern Europe" of title II of the Foreign Operations, Export Financing, and Related Appropriations Act, 1991, funding for the Resident Advisor Program shall be provided by the Agency for International Development (A.I.D.). The maximum amount of the financial assistance available for the legal internship portion of the CLDP program is $55,000.

II. Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between the Department and the recipient U.S. firm or company located in the U.S. With funds provided by AID, the Department will reimburse companies for the roundtrip coach airfare of each intern between the intern's home country and the U.S. internship site upon submission to the Department of the travel invoice (Fly America Act provisions apply). The Department will reimburse companies a stipend of $30 per intern per day in the U.S. for up to four months. The Department also will reimburse companies for a portion of the cost of housing the intern. The Department will reimburse companies up to $350 per month, or a prorated portion of that amount for any period during which the intern is provided housing by the host firm. The maximum lodging reimbursement amount per intern will not exceed $1,400. Disbursement of funds for reimbursement of the stipend and lodging will be made upon certification by the companies that the internship program has been completed and the intern has returned to his or her country. Each award will have a cap of $7,400 for total cost of airline, lodging, and stipend per intern. There are no specific matching requirements for the awards. Companies are expected to bear any costs of providing the intern with medical insurance, housing and other necessary incidentals during the entire term of the internship to the extent they are not covered by the award, including payment for the entire cost of medical insurance and any lodging, food and incidental costs in excess of the reimbursable limits described above. Companies also are responsible for sponsoring the intern for the appropriate U.S. visas. Awards will be provided for this program on a rolling basis. All awards are expected to be made prior to March 1993. Individual internships are expected to run from six weeks to four months.

U.S. firms wishing to utilize CLDP assistance in identifying prospective interns for placement with their U.S. or Eastern European offices and requiring no financial support from the Department may do so without competing for the grant program described herein. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

III. Request for Applications

To obtain a Competitive Application Kit, please send a written request with two self-addressed mailing labels to Kathy Burke, International Program Assistant, Commercial Law Development Program, room 3845, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. A signed original and two copies of the application (Standard Form 424 (Rev. 4–88)) and supplemental materials must be submitted to CLDP at the address designated in the Application Kit in order for the application to be considered. Awards are expected to be made on a rolling basis prior to March 1993.

IV. Eligibility

Applicants for the CLDP Legal Internship Program may be any for-profit or no-profit U.S. law firm, corporation, accounting firm, or trade association, or organization or other pubic or private entity. Each application will receive an objective review by a three-member review panel. Applications will be evaluated on a competitive basis, as they are received, in accordance with the selection criteria set forth below. The Department reserves the right to reject any application, to limit the number of interns per applicant, and to consider other non-competitive procedures to distribute assistance under this program as appropriate and in accordance with law.

A. Selection Criteria

Consideration for financial assistance will be given to CLDP proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide appropriate instruction in the areas of commercial law, including commercial or financial transactions, corporations law, contract law, foreign investment law, commercial dispute resolution, real property rights, intellectual property rights, or government procurement by presenting a realistic workplan detailing the instruction to be provided to the CLDP intern, with emphasis on how the instruction will assist the intern to utilize the training received to lead in his or her country's establishment and implementation of a free market system;

2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern (including the provision of providing housing and medical insurance); and

3. Improve the U.S. geographic diversity of placements.

Out of a 100 point scale the critical criteria account for 80 points. Selection criteria 1 and 2 are critical elements and will be weighted equally. Selection criteria 3 is a preferred element and will account for 20 points. Those applicants that meet both critical elements and, in addition, meet the preferred criteria will receive preferential consideration.

B. Conditions

All Applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

A. The delinquent account is paid in full;

B. A negotiated repayment schedule is established and at least one payment is received; or

C. Other arrangements satisfactory to the Department are made.

2. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

3. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and applicants are advised that:

A. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

B. *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

C. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

D. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. False statements on the application may be grounds for denial or termination of funding, as well as potential civil and criminal liability.

5. Recipients and subrecipients of financial assistance under this program are subject to all applicable Federal laws and Federal and departmental policies, regulations, and procedures applicable to Federal financial assistance awards.

6. The Standard Form 424 (Rev. 4–88) mentioned in this notice is subject to the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–0006.

7. The Grant Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed grant may be incurred before receipt of either a fully executed grant or a specific written authorization from the Grants Officer. If an applicant should incur any cost prior to an award being made, the applicant does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation on the part of the DOC to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of the Department of Commerce.

9. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: December 8, 1992.

Lynn S. West,

Deputy General Counsel.

[FR Doc. 92–30307 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–BW–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

December 4, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the Normal Regime limits for Categories 347/348/647/648 and 351/651 for 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65244, published on December 16, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 8, 1992 you are directed to amend further the directive dated December 10, 1991, to increase the Normal Regime limits for the following categories. The Special Regime limits for Categories 347/348/647/648 and 351/651 remain unchanged.

Normal Regime Category	Amended twelve-month limit [1]
347/348/647/648	1,170,000 dozen.
351/651	145,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–29991 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–DR–F

Denial of Participation in the Special Access and Special Regime Programs

December 8, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Luis Narvaez is in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on January 1, 1993, to deny Luis Narvaez the right to participate in the Special Access and Special Regime Programs, for a period of three years, from January 1, 1993 through December 31, 1995.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Luis Narvaez is in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective on January 1, 1993, you are directed to prohibit Luis Narvaez from further participation in the Special Access and Special Regime Programs, for a period of three years, from January 1, 1993 through December 31, 1995. Goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period January 1, 1993 through December 31, 1995, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30235 Filed 12–11–92; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With the Arab Republic of Egypt on Certain Wool Textile Products

December 9, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 27, 1992, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, the Government of the United States requested consultations with the Government of the Arab Republic of Egypt with respect to women's and girls' wool trousers, slacks and breeches in Category 448, produced or manufactured in Egypt.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Arab Republic of Egypt, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Egypt and exported during the twelve-month period which began on November 27, 1992 and extends through November 26, 1993, at a level of not less than 9,450 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448, or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Arab Republic of Egypt.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 448. Should such a solution be reached in consultations with the Government of the Arab Republic of Egypt, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Egypt

Category 448—Women's and Girls' Wool Trousers, Slacks and Shorts

November 1992

Import Situation and Conclusion

U.S. imports of women's and girls' wool trousers, slacks and shorts, Category 448, from Egypt reached 11,340 dozen in year ending September 1992. Egypt began shipping women's and girls' wool trousers to the U.S. in June 1992 and in just four months—June 1992-September 1992—shipped 11,340 dozen. Egypt became the tenth largest supplier of women's and girls' wool trousers, slacks and shorts to the U.S. market, accounting for 3.5 percent of

total Category 448 imports during the January-September 1992 period.

The sharp and substantial increase in Category 448 imports from Egypt is causing disruption in the U.S. market for women's and girls' wool trousers, slacks and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool trousers, slacks and shorts, Category 448, increased in 1988 and then declined in 1989, 1990, and 1991. Production fell to 204,000 dozen in 1991, 14 percent below the 1990 level and 48 percent below the 1987 level. This decline continued in 1992, with production falling to 195,000 for the year ending June 1992, 12 percent below the year ending June 1991 level. In contrast, U.S. imports of women's and girls' wool trousers, slacks and shorts, Category 448, increased 15 percent, from 299,000 dozen in 1987 to 345,000 dozen in 1991. Imports surged in 1992, increasing 22 percent over the January-September 1991 level and reaching 403,876 dozen in the year ending September 1992, 29 percent above the year ending September 1991 level and the highest 12 month level on record.

The ratio of imports to domestic production more than doubled, increasing from 76 percent in 1987 to 169 percent in 1991. This increase continued in 1992, with the ratio of imports to domestic production reaching 191 percent for the year ending June 1992. The domestic manufacturers' share of the U.S. market fell from 57 percent in 1987 to 37 percent in 1991, a decline of 20 percentage points. This decline continued in 1992, with the domestic manufacturers' share of the U.S. market falling to 34 percent for the year ending June 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 74 percent of Category 448 imports from Egypt during the year ending September 1992 entered the U.S. under HTSUSA number 6204.61.0010—women's wool trousers and breeches. These women's wool trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's wool trousers and breeches.

[FR Doc. 92-30236 Filed 12-11-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursements Rates for Fiscal Year 1993; Correction

This notice corrects the ultrasound charge published in the **Federal Register** on October 15, 1992, in the Medical and Dental Reimbursement Rates for FY 1993, in the section entitled "High Cost Services Requested by External Providers." The Office of the Assistant Secretary of Defense (Health Affairs) has advised that the correct charge for an ultrasound test should be $172.66 instead of $1,109.00. All other charges and provisions of the Medical and Dental Reimbursements Rates for Fiscal Year 1993 remain as stated.

The point-of-contact for this correction is Mr. Walter Fisch, Office of the Deputy Comptroller (Management Systems), Accounting Policy. Mr. Fisch may be reached at (703) 697-3135.

Dated: December 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30281 Filed 12-11-92; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee; Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 166. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 166 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 December 1992.

SUPPLEMENTARY INFORMATION: This document give notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	86		73		159	06-01-91
BETHEL						
05-01--09-30	93		83		176	05-01-92
10-01--04-30	80		81		161	02-01-92
BETTLES	65		45		110	12-01-90
CANTWELL	62		46		108	06-01-91
COLD BAY	71		54		125	12-01-90
COLDFOOT	95		59		154	10-01-92
CORDOVA	66		77		143	12-01-92
CRAIG	67		35		102	07-01-91
DILLINGHAM	76		38		114	12-01-90
DUTCH HARBOR-UNALASKA	113		67		180	05-01-92
EIELSON AFB						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
ELMENDORF AFB						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
EMMONAK	60		40		100	06-01-91
FAIRBANKS						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
FT. WAINWRIGHT						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
HOMER						
05-01--09-30	71		60		131	05-01-93
10-01--04-30	53		62		115	12-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
JUNEAU						
05-01--10-01	$ 88		$ 74		$162	05-01-92
10-02--04-30	75		73		148	01-01-92
KATMAI NATIONAL PARK	89		59		148	12-01-90
KENAI-SOLDOTNA						
04-02--09-30	94		68		162	04-02-93
10-01--04-01	57		66		123	12-01-92
KETCHIKAN						
05-14--10-14	77		61		138	05-14-93
10-15--05-13	68		71		139	12-01-92
KING SALMON 3/	75		59		134	12-01-90
KLAWOCK	75		36		111	07-01-91
KODIAK	71		61		132	01-01-92
KOTZEBUE	125		72		197	01-01-92
KUPARUK OILFIELD	75		52		127	12-01-90
METLAKATLA	79		44		123	07-01-91
MURPHY DOME						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
NELSON LAGOON	102		39		141	06-01-91
NOATAK	125		72		197	01-01-92
NOME						
05-15--09-15	87		72		159	05-15-92
09-16--05-14	76		71		147	05-01-92
NOORVIK	125		72		197	01-01-92
PETERSBURG	72		64		136	05-01-92
POINT HOPE	99		61		160	12-01-90
POINT LAY 6/	106		73		179	12-01-90
PRUDHOE BAY-DEADHORSE	64		57		121	12-01-90
SAND POINT	75		36		111	07-01-91
SEWARD						
05-01--09-30	107		53		160	05-01-92
10-01--04-30	61		48		109	01-01-92
SHUNGNAK	125		72		197	01-01-92
SITKA-MT. EDGECOMBE	72		69		141	01-01-92
SKAGWAY						
05-14--10-14	77		61		138	05-14-93
10-15--05-13	68		71		139	12-01-92
SPRUCE CAPE	71		61		132	01-01-92
ST. GEORGE	100		39		139	06-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
ST. MARY'S	$ 60		$ 40		$100	12-01-90
ST. PAUL ISLAND	81		34		115	12-01-90
TANANA						
05-15--09-15	87		72		159	05-15-92
09-16--05-14	76		71		147	05-01-92
TOK	48		55		103	12-01-92
UMIAT	97		63		160	12-01-90
UNALAKLEET	58		47		105	12-01-90
VALDEZ						
05-01--09-01	98		53		151	05-01-93
09-02--04-30	82		70		152	12-01-92
WAINWRIGHT	90		75		165	12-01-90
WALKER LAKE	82		54		136	12-01-90
WRANGELL						
05-14--10-14	77		61		138	05-14-93
10-15--05-13	68		71		139	12-01-92
YAKUTAT	70		40		110	12-01-90
OTHER 3, 4, 6/	46		47		93	12-01-92
AMERICAN SAMOA	85		47		132	12-01-91
GUAM	112		75		187	05-01-92
HAWAII:						
ISLAND OF HAWAII: HILO	65		61		126	06-01-92
ISLAND OF HAWAII: OTHER	80		61		141	06-01-92
ISLAND OF KAUAI	99		55		154	06-01-92
ISLAND OF KURE 1/			13		13	12-01-90
ISLAND OF MAUI	79		64		143	06-01-92
ISLAND OF OAHU	105		55		160	06-01-92
OTHER	59		47		106	12-01-90
JOHNSTON ATOLL 2/	20		20		40	10-01-92
MIDWAY ISLANDS 1/			13		13	12-01-90
NORTHERN MARIANA ISLANDS:						
ROTA	45		31		76	12-01-90
SAIPAN	68		47		115	12-01-90
TINIAN	44		24		68	12-01-90
OTHER	20		13		33	12-01-90
PUERTO RICO:						
BAYAMON						
04-16--12-14	93		67		160	08-01-92
12-15--04-15	116		69		185	12-15-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
CAROLINA				
04-16--12-14	$ 93	$ 67	$160	08-01-92
12-15--04-15	116	69	185	12-15-92
FAJARDO (INCLUDING LUQUILLO)				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
MAYAGUEZ	85	65	150	08-01-92
PONCE	106	65	171	08-01-92
ROOSEVELT ROADS				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
SABANA SECA				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U S				
05-02--12-15	100	68	168	08-01-92
12-16--05-01	144	73	217	12-16-92
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

6/ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily Rate
DOD Personnel	$13
Non-DOD Personnel	$30

BILLING CODE 3810-01-C

Dated: December 8, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-30283 Filed 12-11-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 230, Cost Accounting Procedures; DD Form 1861; OMB Control Number 0704–0267.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 10 Hours.

Responses per Respondent: 1.

Number of Respondents: 75.

Annual Burden Hours: 750.

Annual Responses: 75.

Needs and Uses: This information is used to distribute contractor facilities capital assets by type for the purpose of developing profit objectives on defense contracts.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 8, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30284 Filed 12–11–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 203, Improper Business Practices and Personal Conflicts of Interest, and the clause at 252.203–7000; OMB Control No. 0704–0277.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 8 hours.

Responses Per Respondent: 1.

Number of Respondents: 1,000.

Annual Burden Hours: 8,000.

Annual Responses: 1,000.

Needs and Uses: DoD FAR Supplement, part 203, and the clause at 252.203–7000 requires contractors to annually report if they have provided compensation to former DoD employees. This collection of information is necessary to comply with 10 U.S.C. 2397c.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30282 Filed 12–11–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Amend Record Systems

AGENCY: Defense Logistics Agency, DoD.

ACTION: Amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend five existing systems of records in the DLA inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 13, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, December 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, August 22, 1986
52 FR 35304, September 18, 1987
52 FR 37495, October 7, 1987
53 FR 04442, February 16, 1988
53 FR 09965, March 28, 1988
53 FR 21511, June 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, August 23, 1988
53 FR 39129, October 5, 1988
53 FR 44937, November 7, 1988
53 FR 48708, December 2, 1988
54 FR 11997, March 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, August 8, 1990
55 FR 32947, August 13, 1990
55 FR 34050, August 21, 1990
55 FR 42755, October 23, 1990
55 FR 53178, December 27, 1990
56 FR 5806, February 13, 1991
56 FR 8987, March 4, 1991
56 FR 11207, March 15, 1991
56 FR 19838, April 30, 1991
56 FR 31392, July 10, 1991 (indexing system)
56 FR 35852, July 29, 1991
56 FR 52017, October 17, 1991
56 FR 55910, October 30, 1991
56 FR 56065, October 31, 1991
56 FR 65245, December 16, 1991
57 FR 2715, January 23, 1992
57 FR 13718, April 17, 1992
57 FR 20471, May 13, 1992
57 FR 28490, June 25, 1992
57 FR 29294, July 1, 1992
57 FR 33323, July 28, 1992
57 FR 35570, August 10, 1992
57 FR 44177, September 24, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The new system notice and the specific changes to the record systems being amended are set forth below followed by the system notices as amended, in their entirety.

Dated: December 8, 1992.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Amendments
S161.25 DLA-T

SYSTEM NAME:

Individual Access Files, (50 FR 22904, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.50 DLA-I."

* * * * *

SYSTEM NAME:

Delete and replace with "Individual Access Records."

* * * * *

SYSTEM LOCATION:

te entry and replace with "Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304—6100, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "DLA civilian and military personnel, contractor employees, and individuals granted or denied access to DLA activities, installations, or databases."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781), et seq.; and E.O. 10450, Security Requirements for Government Employment."

* * * * *

PURPOSE(S):

Delete entry and replace with "Information is used to control access to DLA databases and access to and movement on DLA activities and facilities."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add at end "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

RETRIEVABILITY:

Add after "name," "or Social Security Number."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals applying for identification badges, cards, passes, computer passwords and log-ons; commanders and facility officials who have barred persons access to their activities or databases."

* * * * *

S500.50 DLA-I

SYSTEM NAME:

Individual Access Records.

SYSTEM LOCATION:

Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA civilian and military personnel, contractor employees, and individuals granted or denied access to DLA activities, installations, or databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the request for authorization, issue, receipt, surrender, withdrawal, and accountability pertaining to identification badges, cards and passes, to include application forms, photographs, letters of debarment, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781), et seq.; and E.O. 10450, Security Requirements for Government Employment.

PURPOSE(S):

Information is used to control access to DLA databases and access to and movement on DLA activities and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is maintained and used by General Services Administration Protective Service personnel to adequately control access to, and movement on DLA activities and facilities. The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders, application cards, index cards, computer magnetic tapes or discs, and computer paper printouts.

RETRIEVABILITY:

Retrieved alphabetically by name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after termination or transfer of person granted access, except that individual badges, photographs or passes will be destroyed

upon revocation, cancellation, or expiration. Records relating to persons barred from a facility will be destroyed 5 years after the person is notified he/she is barred from an activity or installation.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Command Security, HQ DLA-I, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals applying for identification badges, cards, passes, computer passwords and log-ons; commanders and facility officials who have barred persons access to their activities or databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.15 DLA-M/DMLPO

SYSTEM NAME:

Information Military Personnel Records, (50 FR 22918, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S200.10 DLA-M."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are contained in the Address Directory published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

S200.10 DLA-M

SYSTEM NAME:

Information Military Personnel Records.

SYSTEM LOCATION:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and reserve personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evaluation reports, general and special orders, leave slips, qualification records, applications for ID Cards, security clearance, and miscellaneous correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number.

PURPOSE(S):

To accumulate documents relating to the military member while assigned to DLA. The records are used by the Staff Director and his staff and Heads of PLFAs and their staff for notification of assignments, career briefs, assignment orders, promotion data, personal data, awards and decorations, training data, recommendations for disciplinary action, review procedures instituted to control incidents, and advising the Director of incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Retained during individual's assignment to DLA and destroyed within 1 year of departure.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special orders, service records, in/out processing documents, and computer listings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.45 DLA-M/DMLPO

SYSTEM NAME:

Active Duty Military Personnel Data Bank System, (50 FR 22919, May 29, 1985).

CHANGES:

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SYSTEM IDENTIFIER:

Delete entry and replace with "S200.20 DLA-M."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "The system contains name, grade, Social Security Number, organization, position data, branch of service and specialty, dates of rank, civilian and professional education, position requirements, dates of assignment and rotation, and retirement and separation data. The system also contains the rater's name, grade, service, social security number, and rotation date."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number."

* * * * *

PURPOSE(S):

Delete entry and replace with "To ensure effective personnel management within DLA and to assist individual military personnel in their career management."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed upon reassignment of individual or upon supersession, as appropriate."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

S200.20 DLA-M

SYSTEM NAME:

Active Duty Military Personnel Data Bank System.

SYSTEM LOCATION:

Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel currently assigned to the Defense Logistics Agency and history records of those individuals previously assigned.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains name, grade, Social Security Number, organization, position data, branch of service and specialty, dates of rank, civilian and professional education, position requirements, dates of assignment and rotation, and retirement and separation data. The system also contains the rater's name, grade, service, social security number, and rotation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397, Social Security Number.

PURPOSE(S):

To ensure effective personnel management within DLA and to assist individual military personnel in their career management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed upon reassignment of individual or upon supersession, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records and Position Distribution Reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.70 DLA-KR

SYSTEM NAME:

Reserve Affairs, (50 FR 22922, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with "S200.30 DLA-M."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; E.O. 9397, Social Security Number; and DoD Directive 5105.22, Defense Logistics Agency."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed 2 years after separation or release from mobilization designation, or after supersession or obsolescence, or after 5 years, as appropriate."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Office of Military Personnel, DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

S200.30 DLA-M

SYSTEM NAME:

Reserve Affairs.

SYSTEM LOCATION:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100, and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Ready Reserve, Army, Air Force, Navy and Marine personnel assigned to DLA Individual Mobilization Augmentee (IMA) positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer records and printouts containing such items as, name, grade, Social Security Number, service, career specialty, position title, date of birth, commission date, promotion date, release date, security clearance, education, home address and civilian occupation of the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; E.O. 9397, Social Security Number; and DoD Directive 5105.22, Defense Logistics Agency.

PURPOSE(S):

The purpose of the system is to have information readily available in the day-to-day operation of the Reserve Mobilization program. It is used by the Staff Director, his Deputy and the Reserve personnel specialist. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions, scheduling, and verification of active duty and inactive duty training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Maintained in area accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after separation or release from mobilization designation, or after supersession or obsolescence, or after 5 years, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Military Personnel, HQ DLA-M, Cameron Station, Alexandria, VA 22304–6100 and the heads of the DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an Appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data processing output from the Military Services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S491.10 DLA-K

SYSTEM NAME:

Nonappropriated Fund (NAF) Membership Records, (50 FR 22938, May 29, 1985).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Change to "S200.40 DLA-M."

* * * * *

SYSTEM NAME:

Change to "Morale, Welfare, and Recreation (MWR) Records."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "MWR activities at DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals participating in MWR activities."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Activity membership and registration records, daily status report on Unaccompanied Personnel Housing, liability agreements between activities and participants, and check cashing and debt collection records. Records contain name, rank, Social Security Number, names of family members, emergency medical data, birth date, home address and telephone number, and office telephone number."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 136, Assistant Secretaries of Defense; and E.O. 9397, Social Security Number."

* * * * *

PURPOSE(S):

Delete entry and replace with "Used to determine membership and participation eligibility, to register applicants for classes and events, to notify members of activities, to bill and receipt for dues and charges, and for similar membership-related purposes. Records may also be used for debt

collection and to terminate membership for nonpayment of dues."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete and replace with "The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system."

* * * * *

STORAGE:

Delete and replace with "Records are stored in paper and computerized form."

* * * * *

SAFEGUARDS:

Delete and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their official duties. The computer files are password protected with access restricted to authorized users."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "The manager of the MWR activity at the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is obtained from the individual, assignment orders, identification cards, and financial records."

S200.40 DLA-M

SYSTEM NAME:

Morale, Welfare, and Recreation (MWR) Records.

SYSTEM LOCATION:

MWR activities at DLA Primary Level Field Activities (PLFA's). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in MWR activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Activity membership and registration records, daily status report on Unaccompanied Personnel Housing, liability agreements between activities and participants, and check cashing and debt collection records. Records contain name, rank, social security number, names of family members, emergency medical data, birth date, home address and telephone number, and office telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 136, Assistant Secretaries of Defense; and E.O. 9397, Social Security Number.

PURPOSE(S):

Used to determine membership and participation eligibility, to register applicants for classes and events, to notify members of activities, to bill and receipt for dues and charges, and for similar membership-related purposes. Records may also be used for debt collection and to terminate membership for nonpayment of dues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their official duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Destroy one year after member departs, after auditing or after purpose has been served.

SYSTEM MANAGER(S) AND ADDRESS:

The manager of the MWR activity at the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, assignment orders, identification cards, and financial records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–30286 Filed 12–11–92; 8:45 am]

BILLING CODE 3810–01–F

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 4–5 February 1993, at Eglin AFB, Florida from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30245 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 7–8 January 1993, at Wright Laboratories, Wright-Patterson AFB, Ohio from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30249 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on GPS Integrity and Denial will meet from 8 a.m. to 5 p.m. on 6–7 January 1993 at the Lincoln Laboratory, Massachusetts.

The purpose of this meeting is to receive information briefings on GPS capabilities, threats, potential vulnerabilities and program impacts. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30246 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Air force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on IR Countermeasures and Self Defense Against IR Missiles will meet on 14–15 January 1993, at Phillips Laboratories, Kirtland AFB, Albuquerque, NM, from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information relating to the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–30247 Filed 12–11–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Withdrawal of a Notice of Intent To Prepare a Draft Environmental Impact Statement; Rio Grande de Manati at Baraceloneta, PR

AGENCY: Army Crops of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: A Notice of Intent to prepare a DEIS for a flood protection study of the Rio Grande de Manati at Barceloneta, Municipality of Barceloneta, Puerto Rico, is withdrawn because the flood protection works have been planned so that they will have no significant effect on the human environment.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action can be answered by: Dr. Gerald Atmar, U.S. Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; telephone (904) 323–2615.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a DEIS on the feasibility of providing flood control along the Rio Grande de Manati in the vicinity Barceloneta, Municipality of Barceloneta, Puerto Rico, was published in the FR 11731, 20 March 1991. At that time anticipated significant issues included impacts on wetlands, water quality, agricultural lands, wildlife, fisheries, surface and ground water resources, recreation and Federally listed threatened species and endangered species. Subsequent coordination with all affect agencies and planning that was responsive to the listed concerns permitted formulation of a plan that avoids impacts on significant cultural resources present in the study area and provides for salvage of any such resources as yet unevaluated. The plan produces not net loss of wetlands and other important fish and wildlife habitat and does not adversely impact water quality or other resources originally thought to be at issue. The Corps, Preliminary Environmental Assessment indicates that the planned action will produce no significant impact to the human environment, and that an Environmental Impact Statement is not required. All affected state and Federal agencies and interested private groups have been involved in ongoing scoping, and documentation has been received from the State Historic Preservation Office, the Puerto Rico Department of Natural Resources, the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and the Endangered Species Act, and the U.S. Department of Agriculture.

A draft feasibility report and environmental assessment are scheduled to be made available for public and agency review in December 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–30248 Filed 12–11–92; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No.

96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–254, EIA–851 and EIA–858.
3. 1905–0160.
4. Nuclear and Uranium Data Program Package.
5. Revision—The purpose of this request is to obtain OMB approval of revisions on Form EIA–858, Uranium Industry Annual Survey. Changes made to Form EIA–858 for 1992 include clarifications to the instructions for Schedule A. On Schedule B, each Custody Transaction involving uranium of foreign origin as well as each Transfer of Title Transaction must be reported under Item 1.C; natural and enriched uranium inventories at enrichment suppliers must be reported separately under Item 3; and a new data element, Item 7, requests the total amounts of unirradiated (new) uranium in fuel assemblies loaded into reactors during the Survey Year and prior year.
6. Monthly, quarterly, semi-annually, and annually.
7. Mandatory.
8. State or local governments, businesses or other for-profit, and small businesses or organizations.
9. 176 respondents.
10. 2.06 responses.
11. 13.45 hours per response.
12. 4,868 hours.
13. Forms EIA–254, 851 and 858 collect data on the costs of nuclear power plants under construction, domestic uranium production, and certain aspects of uranium marketing, exploration and finance. Data are used in determining the viability of the domestic uranium industry. Respondents are firms in the uranium business and electric utilities.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 7, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Adminstration.

[FR Doc. 92–30289 Filed 12–11–92; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so, within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–598.
3. Not Applicable.

4. Certification for Entities Seeking Exempt Wholesale Generator Status.
5. New.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit, small businesses or organizations.
9. 1 respondent.
10. 1 response per respondent.
11. 1 hour per response.
12. 1 hour.
13. The Energy Policy Act of 1992 amended section 32 of the Public Utility Holding Company Act (PUHCA) to create a category of power producers known as exempt wholesale generators (EWGs). Persons seeking to become an EWG must file an application with the Commission. Persons that are granted EWG status will not be considered electric utility companies under section 2(a)(3) of PUHCA, and will be exempt from regulation under PUHCA.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 8, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–30288 Filed 12–11–92; 8:45am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–83–000, et al.]

Tampa Electric Company, et al; Electric rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER93–83–000]

December 3, 1992.

Take notice that on November 25, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a clarification and amendment to the Letter of Commitment between Tampa Electric and the Kissimmee Utility Authority (Kissimmee) that was tendered for filing on October 30, 1992.

Tampa Electric's submittal clarifies the provisions of the Letter of Commitment concerning purchased costs and transmission service, and amends the provisions concerning capacity charges for supplemental capacity.

Tampa Electric propose an effective date of January 1, 1993, for the letter of Commitment, as amended, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power Company

[Docket No. ER93–221–000]

December 3, 1992.

Take notice that on November 18, 1992, Washington Water Power Company tendered for filing a Notice of Termination of Rate Schedule No. 158.

Comment date: December 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Appalachian Power Company

[Docket No. ER93–200–000]

December 3, 1992.

Take notice that on November 18, 1992, Appalachian Power Company (APCO) tendered for filing the following agreements, pursuant to the CIAC Amnesty Order:

(1) Letter Agreement among APCO, the City of Bedford, Virginia and the Wheelabrator Corporation, dated November 14, 1985.

(2) Letter Agreement between APCO and the City of Radford, Virginia, dated February 5, 1979.

(3) Letter Agreement between APCO and the City of Salem, Virginia, dated August 12, 1982.

(4) Letter Agreement between APCO and the City of Danville, Virginia, dated June 22, 1977.

Comment date: December 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER93–88–000]

December 3, 1992.

Take notice that on November 19, 1992, Consumers Power Company (Consumers) tendered for filing an amendment in the above-referenced docket.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket Nos. ER92–517–003 and ER92–517–001]

Errata

December 4, 1992.
November 27, 1992.

Take notice that the Notice of Filing issued on November 27, 1992 under Docket Nos. ER92–517–000 and ER92–517–001 should have been issued under Docket Nos. ER92–517–003 and ER92–517–001 instead of Docket Nos. ER92–517–000 and ER92–517–001.

6. Ohio Power Company

[Docket No. ER93–197–000]

December 4, 1992.

Take notice that on November 17, 1992, Ohio Power Comnpany (OPCo) tendered for filing an Agreement between OPCo and the City of Clyde, Ohio pursuant to the CIAC Amnesty Order issued on October 13, 1992 in Docket No. ER92–183–002.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER93–283–000]

December 4, 1992.

Take notice that on November 25, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1993 Cost Report for the RS–2 rate schedule under which CVPS sells electric power to Connecticut Valley Electric Company Inc.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER93–243–000]

December 4, 1992.

Take notice that on November 25, 1992, Union Electric Company (UE) tendered for filing an Amendment dated September 25, 1992, to the Interchange Agreement dated June 28, 1978, between Associated Electric Cooperative, Incorporated and UE. UE asserts that the Amendment primarily provides for new and revised interconnection points and intertie points.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER93–240–000]

December 4, 1992.

Take notice that on November 25, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1993 Cost Report for FERC Electric Tariff, Original Volume No. 4 under which CVPS provides unreserved system power service to the following customers:

Lyndonville Electric Department
Village of Ludlow Electric Light Department

Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER93–241–000]

December 4, 1992.

Take notice that on November 27, 1992, Florida Power & Light Company (FPL) tendered for filing the Letter Agreement Extending the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Tampa Electric Company (Letter Agreement). FPL requests that the Letter Agreement be made effective January 1, 1993.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas Gas and Electric Company

[Docket No. ER93–231–000]

December 4, 1992.

Take notice that on November 23, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change to its Federal Energy Regulatory Commission Supplement No. 5 to Electric Service Schedule No. 182. KG&E states the purpose of the change is to extend the term of the existing Short-Term Participation Power Service Schedule between KG&E and The City of Girard, Kansas. The change is proposed to become effective February 1, 1993.

Copies of the filing were served upon the City of Girard and the Kansas Corporation Commission.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Company

[Docket No. ER93–233–000]

December 4, 1992.

Take notice that on November 23, 1992, Otter Tail Power Company (Otter Tail) tendered for filing a Notice of Cancellation of Rate Schedule No. 0153.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER93–53–000]

December 4, 1992.

Take notice that on November 20, 1992, Arizona Public Service Company (APS) tendered for filing in this docket a copy of an agreement between APS and the City of Williams providing for Operation, Maintenance, Construction and Office Functions. APS states that it is making the filing in light of earlier Commission orders announcing an amnesty period for filing of jurisdictional agreements involving contributions in aid of construction.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Power & Light Company

[Docket No. ER93–173–000]

December 4, 1992.

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Firm Power Purchase" between Puget and Cascade Hydro, Inc. (the "Agreement"), containing provisions for construction of facilities, power purchase by Puget or Parallel operation of facilities. A copy of the filing was served upon Cascade Hydro, Inc.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power and Light Company

[Docket No. ER93–229–000]

December 4, 1992.

Take notice that on November 23, 1992, Delmarva Power and Light Company (DPL) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Philadelphia Electric Company (PE) and DPL dated November 23, 1993. This contract sets forth the terms under which DPL will sell PJM installed capacity credits to PE. DPL requests that the Commission permit this Agreement to become effective on January 22, 1993.

DPL states that a copy of this filing has been served by mail upon PE, the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER93–227–000]

December 4, 1992

Take notice that on November 20, 1992, Florida Power & Light Company tendered for filing a notice of cancellation of its service agreement with Florida Keys Electric Cooperative Association, Inc. and a conforming change to Sheet No. 23 to its FERC Electric Tariff.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Southerwesten Public Service Company

[Docket No. ER85–477–012]

December 4, 1992

Take notice that on November 20, 1992, Southwestern Public Service Company (Southwestern) tendered for filing its compliance report in the above-referenced docket.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. United Illuminating Company

[Docket No. ER92–2–002]

December 4, 1992

Take notice that on November 20, 1992, United Illuminating Company (UI) tendered for filing its compliance report in the above-referenced docket.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER93–242–000]

December 4, 1992

Take notice that on November 27, 1992, Florida Power & Light Company (FPL) filed Amendment Number One to the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Tampa Electric Company. FPL requests an effective date of February 1, 1993.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Electric Energy, Inc

[Docket No. ER93–236–000]

December 4, 1992

Take notice that on November 25, 1992, Electric Energy, Inc. (EEInc.) tendered for filing proposed changes in its FERC Electric Service Tariff, including Modification 15 to the Service Agreement between EEInc. and the Department of Energy of the United States of America (DOE) and a Letter Supplement dated October 7, 1992 to the Power Supply Agreement dated September 2, 1987 between EEInc., on the one hand, and Union Electric Company, Illinois Power Company, Kentucky Utilities Company and Central Illinois Public Service Company (collectively, the "Sponsoring Companies"), on the other. The proposed changes modify the method of calculating demand charges and base excess energy charges under the Agreements. For the calendar year 1991, the proposed changes would have

increased jurisdictional revenues to EEInc, by $623,708.70, or 0.44%.

The proposed changes are implemented to remove the variable fuel cost factor from the formulae by which demand charges and excess Joppa energy charges are calculated. In addition, the base plant availability factor for use in the demand charge calculation has been reduced to 92.5%, rather than 100%. The proposed changes were requested by DOE to remove this variable rate element from the calculation of the charges in question.

Copies of the filing were served upon DOE, the Sponsoring Companies, and the Illinois Commerce Commission. Copies are also available for inspection at EEInc.'s offices in Joppa, Illinois.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER93–239–000]

December 4, 1992

Take notice that on November 25, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 1993 Cost Report for FERC Electric Tariff, Original Volume No. 3 under which CVPS provides Transmission and Distribution Service to the following customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department Village of Ludlow Electric Light Department Village of Hyde Park Water and Light Department Rochester Electric Light and Power Company

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas City Power & Light Company

[Docket No. ER93–237–000]

December 4, 1992

Take notice that on November 25, 1992, Kansas City Power & Light Company (KCP&L) tendered for filing, pursuant to 18 CFR 35.12, an open access transmission tariff to be effective January 1, 1993. The tariff provides rates and terms for firm and non-firm transmission service for all eligible utilities, as defined in the tariff. KCP&L has requested waiver of certain Commission requirements, including notice, cost of service data and revenue estimates.

Copies of the filing were served upon the Kansas State Corporation Commission and Missouri Public Service Commission.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power & Light Company

[Docket No. ER93–228–000]

December 4, 1992

Take notice that on November 23, 1992, Florida Power & Light Company (FPL) tendered for filing the Letter of Agreement Regarding Construction and Reimbursement of Calusa-Lee No. 2 Line Terminal at Calusa between FPL and Lee County Electric Cooperative, Inc.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Municipal Resale Service Customer v. Ohio Power Company

[Docket No. EL93–6–000]

December 4, 1992.

Take notice that on November 18, 1992, Municipal Resale Service Customers (MRS) tendered for filing a Complaint and Request for Investigation against Ohio Power Company (Ohio Power). MRS request the Commission to investigate whether Ohio Power has charged and is charging wholesale rates that are unjust, unreasonably, unduly discriminatory, or otherwise unlawful under the Act.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

25. PacifiCorp

[Docket No. ER93–247–000]

December 4, 1992.

Take notice that on December 1, 1992, PacifiCorp tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, revisions to Exhibit B, D and H of the General Transfer Agreement, Contract No. DE–MS79–82BP90049, between Pacificorp and Bonneville Power Administration (Bonneville), PacifiCorp's Rate Schedule FERC No. 237.

The Exhibits have been revised to add or delete points of delivery and the associated transfer charges, loss factors and power factors.

PacifiCorp requests an effective date not later than sixty days from the Commission's receipt of this filing.

Copies of this filing were supplied to Bonneville and the Public Utility Commission of Oregon.

Comment date: December 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Shirley Ann Bird Perry

[Docket No. ID–2755–000]

Take notice that on December 1, 1992, Shirley Ann Bird Perry (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Southwestern Public Service Company
Advisory Director—Texas Commerce Bank-Austin, National Association

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER92–50–000]

December 7, 1992.

Take notice that on November 27, 1992, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO), together with two supplements to the agreement. One supplement provides for construction and maintenance of interconnection facilities between Con Edison and LILCO; the other supplement would decrease annual transmission revenues from LILCO by $328,558.46. Con Edison has requested waivers so that the interconnection supplement can become effective as of August 22, 1977, and the transmission rate reduction supplement as of July 1, 1992.

Con Edison states that a copy of this filing has been served by mail upon LILCO and the parties to Docket No. ER92–50–000.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Company

[Docket No. ER93–2–000]

December 7, 1992.

Take notice that on November 16, 1992, New England Power Company (NEP) tendered for filing an amendment to its original filing submitted on October 1, 1992, in the above-referenced docket.

Comment date: December 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Electric Power Company

[Docket No. ER93–251–000]

December 7, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on

December 3, 1992, tendered for filing the MIN–WUMS Capability Allocation Agreement between itself, Wisconsin Power and Light Company, Wisconsin Public Service Corporation. The Agreement resolves the apportionment of the limited transmission capability between Minnesota and the Wisconsin-Upper Michigan subregion of the Mid America Interpool Network (MAIN).

The parties request an effective date coincident with the Commission's acceptance of the Agreement.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power Corporation

[Docket No. ER93–252–000]

December 7, 1992.

Take notice that on December 3, 1992, Florida Power Corporation filed an agreement between itself and Seminole Electric Cooperative, Inc., which provides for a reduction in rates for service by Florida Power to serve extraterritorial load. The Company requests waiver of the 60 day notice requirement so that the rate reduction which the service agreement provides for may be allowed to become effective on June 1, 1987.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Bangor Hydro-Electric Company

[Docket No. ER93–244–000]

December 7, 1992.

Take notice that on November 30, 1992, Bangor Hydro-Electric Company (Bangor) tendered for filing Notices of Cancellation of the following rate schedules:

Rate schedule	Affected customers	Termination date
0050	Boston Edison Company	1/30/93
	Down East Peat, L.P	1/30/93
0051	Boston Edison Company	1/30/93

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Southwestern Electric Power Company

[Docket No. ER93–249–000]

December 7, 1992.

Take notice that on December 2, 1992, Southwestern Electric Power Company (SWEPCO) tendered for filing a Scheduling Agreement between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC) dated April 22, 1992 and a related Letter Agreement dated September 18, 1992. Under such agreements, SWEPCO will act as NTEC's agent for the purpose of scheduling power and energy purchased by NTEC from Entergy Power, Inc. (EPI) and Entergy Services, Inc. (ESI). The Scheduling Agreement also makes provision for the sale by SWEPCO to NTEC of Backup Energy, Emergency Energy and Substitute Energy which may be used in certain circumstances in place of energy provided by EPI or ESI.

SWEPCO requests that such agreements be made effective on the later of February 1, 1993 or the date on which the Commission permits to become effective the Unit Power Sales Agreement between NTEC and EPI filed by ESI in Docket No. ER92–365–000.

Copies of the filing have been served on NTEC and on the Public Utility Commission of Texas.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Arizona Public Service Company

[Docket No. ER93–248–000]

December 7, 1992.

Take notice that on December 2, 1992, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Supply Agreement between Arizona Public Service Company (APS or Company) and Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk) (APS–FPC Rate Schedule No. 58) and revised Exhibit B to Service Schedule D of the Power Coordination Agreement between Plains Electric Generation and Transmission Cooperative, Inc. (Plains) and APS (APS–FERC Rate Schedule No. 82) (collectively Exhibits and Agreements). The Exhibits list Contract Demands applicable under the Agreements.

No change to the rate and revenue levels currently on file with the Commission for the 12 months immediately after the proposed effective date is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Wellton-Mohawk, Plains, the Arizona Corporation Commission, and the New Mexico Public Service Commission.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Idaho Power Company

[Docket No. ER92–787–000]

December 7, 1992.

Take notice that on December 1, 1992, in response to the Commission's deficiency letter of October 1, 1992, Idaho Power Company (IPC) tendered for filing a Draft Transmission Service Agreement between Sierra Pacific Power Company and Idaho Power Company.

IPC has requested that the Commission suspend further consideration of this Agreement until the parties have concluded negotiations.

Comment date: December 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

35. LG&E—Westmoreland Hopewell

[Docket No. QF88–85–004]

December 7, 1992.

On December 3, 1992, LG&E—Westmoreland Hopewell, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment pertains to the revision of the facility's testing period and provides additional information for computation of the operating values subsequent to the testing period.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30199 Filed 12–11–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–008]

Frontier Gas Storage Co.; Sale Pursuant to Settlement Agreement

December 3, 1992.

Take notice that on November 24, 1992, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Avenue, NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 et. al., submitted an executed Service Agreement under Rate Schedule LVS–1, providing for the possible sale of 2,000,000 MMBtu of Frontier's gas storage inventory on an "in place" basis to Williston Basin Interstate Pipeline Company (Williston Basin).

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985 Order, Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before December 14, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30210 Filed 12–11–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–23–000, RP91–203–000, and RP92–132–000 (Consolidated, In Part)]

Tennessee Gas Pipeline Co.; Notice of Conference

December 4, 1992.

Take notice that on December 17, 1992, beginning at 9:30 a.m., a conference will be convened in the above-captioned restructuring docket. The conference will be held in Hearing Room Number 1 at the Federal Energy Regulatory Commission, 810 1st Street, NE., Washington, DC.

This conference is being held to discuss Tennessee Gas Pipeline Company's (Tennessee) Order No. 636 restructuring compliance filing, which Tennessee filed on November 2, 1992, and also to discuss the comments filed by the parties in response to Tennessee's filing.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Sharon Dameron at (202) 208–2017.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30211 Filed 12–11–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–000 (Phase II)]

Transcontinental Gas Pipe Line Corp.; Notice of Informal Settlement Conference

December 7, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on December 16, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208–0740 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30212 Filed 12–11–92; 8:45 am

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–106–NG]

Northwest Natural Gas Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northwest Natural Gas Company authorization to import, at Kingsgate, British Columbia, up to 48,168 Mcf per day of Canadian natural gas over a period of ten years, beginning the earlier of November 1, 1993, or the date the Pacific Gas Transmission Expansion Project becomes operational, through October 31, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30290 Filed 12–11–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44593; FRL–4178–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on dibenzo-para-dioxins/dibenzofurans: decabromodiphenyloxide (CAS No. 1163–19–5), submitted pursuant to a final test rule. Data were also submitted on methyl tertiary butyl ether (MTBE) (Cas No. 1634–04–4) pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these

testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for decabromodiphenyloxide were submitted by Ameribrom, Inc., pursuant to a test rule at 40 CFR Part 766. They were received by EPA on November 18, 1992. The submission describes the determination of polybrominated dibenzo-p-dioxins and dibenzofurans by high-resolution gas chromatography/ medium high resolution mass spectrometry in decabromodiphenyloxide. These chemical analyses are required by this test rule.

Test data for MTBE were submitted by the Methyl Tertiary Butyl Ether Task Force in behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on October 29th and November 19, 1992. The submissions describe vapor inhalation oncogenicity studies in CD-1® mice and Fischer 344 rats. Health effects testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44593). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 30, 1992.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-30296 Filed 12-11-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50753; FRL-4180-7]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from the Monsanto Company for an EPA Experimental Use Permit (EUP) for a transgenic plant pesticide. This is the second EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a plant that has been genetically-altered to produce a pesticide. The Agency has determined that this application may be of regional and national significance. Therefore, the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before January 13, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP-50753 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall 2 1921, Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall 2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, (703)305-7690

SUPPLEMENTARY INFORMATION: On October 22, 1992, an application for an EUP was received from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, Missouri 63198. The application was assigned EPA File Symbol 524-EUP-TO. Monsanto proposes to test the Colorado Potato Beetle (CPB) control protein, delta-endotoxin, derived from the soil microbe *Bacillus thuringiensis* subspecies *tenebrionis* (B.t.t.), as expressed in plants and tubers of several lines of potato cultivars. According to the application, CPB control protein, B.t.t. delta-endotoxin, will be present at no more than .01% of the total weight of the potato plants or tubers. The delta-endotoxin gene of B.t.t. is transferred to potato via the Ti plasmid of *Agrobacterium tumefaciens* strain ABI (vector PV-STBTO__). The vector agent, *Agrobacterium tumefaciens* strain ABI, however, is not associated with the transformed potato plants or tubers; during the gene transfer procedure, the potato explants are treated with an antibiotic known to inhibit the growth of the bacterium, *Agrobacterium tumefaciens* strain ABI. According to the application, the expressed B.t.t. delta-endotoxin is contained intracellularly within the tubers and plants; as a result, humans handling the plants and tubers will have an extremely low dermal exposure to the CPB control protein. In addition, Monsanto has submitted, as part of their EUP protocols, specific precautionary measures they will take to reduce the possibility of accidental ingestion of plant parts or tubers by humans or domestic animals.

Some of the potato cultivar lines will contain only the B.t.t. gene for mediating CPB resistance. Other potato cultivar lines have been modified to contain genes mediating CPB and Potato Virus Y (PVY) or Potato Leaf Roll Virus (PLRV) resistance.

Forty and one-half acres of CPB resistant potato plants and 48 acres of CPB resistant potato tubers will be planted for a total of 88.5 acres. A maximum of 15,000 plants or tubers will be planted per acre, each weighing approximately 5.6 grams per plant and 60 grams per tuber. The total plant material, at planting, will contain a maximum of 129.3 grams B.t.t. protein, with levels rising to a maximum of 34.6 kilograms of B.t.t. protein at harvest.

Individual test sites range from one-fifth to 15 acres in size; however, the majority will be under 1 acre. Proposed test sites are located in the following 14 states: Colorado, Hawaii, Idaho, Maine, Maryland, Michigan, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin. Upon completion of testing, some potato plants and tubers will be collected and saved for future research, analyses, or plantings. All other plant material will be destroyed. Because no plants or tubers will be used for food or feed, no tolerances for this EUP are requested.

The application proposes that the permit be issued for 1 year, beginning March 1, 1993, and ending March 30, 1994. The labeling proposed by

Monsanto Company states the following:

This package contains Colorado potato beetle resistant potato plants containing a *Bacillus thuringiensis* subspecies *tenebrionis* protein. Contains plants containing vector PV-STBTO____. For use only at an application site of a cooperator and in accordance with the terms and conditions of the Experimental Use Permit. This labeling must be in the possession of the user at the time of planting of the potato plants. It is a violation of Federal law to use these plants in any manner inconsistent with this labeling. These plants contain *Bacillus thuringiensis* subspecies *tenebrionis* insecticidal protein and may only be used according to the protocols as included in the approved EUP program for evaluation of the control of the following insect: Colorado Potato Beetle/*Leptinotarsa decemlineata*

Cooperators must have a copy of each applicable protocol prior to initiating any research with these plants. Plants should be planted at a maximum of 15,000 plants per acre depending on the site variety. Do not contaminate water, food or feed by storage and/or disposal. Store in cool dry place inaccessible to children. Any plants not used in these experiments must be returned to Monsanto or disposed of as specified in the field protocols. All plant material that is not saved for further research, analyses, or future plantings must be destroyed as specified in the field protocols. None of the plants or plant material may be sold or allowed to enter into commerce. Do not reuse bag. Discard in trash. Ensure that the bag is completely empty of plants before disposing in the trash.

Proposed EUP Program

The proposed EUP program will include the following five experiments designed to evaluate the performance of the expressed protein against the CPB: efficacy and agronomic evaluations; performance confirmation; population dynamics and resistance management. In addition, seed increase trials will be conducted in order to produce seed for future plantings. In keeping with acceptable agronomic practices for each region, fertilizer, herbicides, and fungicides will be used, if needed, to improve soil nutrient levels, and to control weeds and diseases. If CPB populations exceed economic threshold levels, additional insecticides will be applied in accordance with local integrated pest management (IPM) practices to meet the objectives of the experiment. Any conventional pesticides used in this EUP program will be applied according to each pesticide's application rate as specified on its label.

Upon review of the Monsanto application, any comments received in response to this notice and any other relevant information, EPA will decide whether to issue or deny the EUP. If issued, EPA will set conditions under which the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register.**

A copy of the Monsanto EUP application deleted of all CBI is available for public inspection in the Public Docket Office at the address listed under the ADDRESSES unit.

Dated: December 8, 1992.

Lawrence E. Culleen

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–30297 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–50–F

Office of Research and Development

[FRL–4545–1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method and an Equivalent Method Determination

Notice is hereby given that on November 2, 1992, the Environmental Protection Agency received two applications from Horiba Instruments Incorporated, 17671 Armstrong Avenue, Irvine, California 92714. The first application is to determine if the Horiba Model APNA–350E Oxides of Nitrogen Monitoring System should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. The second application is to determine if the Horiba Model APSA–350E Sulfur Dixoide Monitoring System should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that either of these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

Courtney Riordan,

Assistant Administrator for Research and Development

[FR Doc. 92–30294 Filed 12–11–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Procedures for Monitoring Bank Secrecy Act Compliance.

Form Number: None.

OMB number: 3064–0087.

Expiration Date of OMB Clearance: January 31, 1993.

Frequency of Response: Recordkeeping, on occasion.

Respondents: Insured State nonmember banks.

Number of Recordkeepers: 8,400.

Annual Hours Per Recordkeepner: 0.5.

Total Annual Burden Hours: 4,200.

OMB Reviewer: Gary Waxma, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0087), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before February 12, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured state nonmember banks must establish and maintain written procedures to assure and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and with Treasury Department regulations 31 CFR part 103.

Dated: December 8, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–30222 Filed 12–11–92; 8:45 am]

BILLING CODE 6714–01–M

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in July 2, 1992 edition of the **Federal Register**. The following is a list of financial institutions which have been placed in liquidation since the November 12, 1992 publication.

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION ALPHA LISTING (NAME)

Institution name, city/state	Date closed, region	Ref. #
Anchorage C.O.—CPII, Anchorage, AK	10/14/92, San Francisco	3963
Eastwest Bank, National Association, Kihei, HI	10/02/92, San Francisco	4519
First City Collecting Bank, Houston, TX	10/30/92, Dallas	4543
First City, Alice, Texas, Alice, TX	10/30/92, Dallas	4523
First City, Aransas Pass, Aransas Pass, TX	10/30/92, Dallas	4524
First City, Austin, Austin, TX	10/30/92, Dallas	4525
First City, Beaumont, Beaumont, TX	10/30/92, Dallas	4526
First City, Bryan, Bryan, TX	10/30/92, Dallas	4527
First City, Corpus Christi, Corpus Christi, TX	10/30/92, Dallas	4528
First City, Dallas, Dallas, TX	10/30/92, Dallas	4529
First City, El Paso, El Paso, TX	10/30/92, Dallas	4530
First City, Graham, Graham, TX	10/30/92, Dallas	4531
First City, Houston, Houston, TX	10/30/92, Dallas	4532
First City, Kountze, Kountze, TX	10/30/92, Dallas	4533
First City, Lake Jackson, Lake Jackson, TX	10/30/92, Dallas	4534
First City, Lufkin, Lufkin, TX	10/30/92, Dallas	4535
First City, Madisonville, Madisonville, TX	10/30/92, Dallas	4536
First City, Midland, Midland, TX	10/30/92, Dallas	4537
First City, Orange, Orange, TX	10/30/92, Dallas	4538
First City, San Angelo, San Angelo, TX	10/30/92, Dallas	4539
First City, San Antonio, San Antonio, TX	10/30/92, Dallas	4540
First City, Sour Lake, Sour Lake, TX	10/30/92, Dallas	4541
First City, Tyler, Tyler, TX	10/30/92, Dallas	4542
First Constitution Bank, New Haven, CT	10/02/92, New York	4521
First New York Bank for Business, New York, NY	11/13/92, New York	4549
Greenwood Bank of Bethel, Inc., Bethel, CT	11/06/92, New York	4544
Guaranty-First Trust Co., Waltham, MA	11/13/92, New York	4545
Investors Bank & Trust Co., Gretna, LA	11/13/92, Chicago	4547
Merchants Bank, Kansas City, MO	11/20/92, Chicago	4550
Metro North State Bank, Kansas City, MO	11/13/92, Chicago	4546
Statewide Thrift & Loan, Redwood City, CA	11/13/92, San Francisco	4548
The Howard Savings Bank, Livingston, NJ	10/02/92, New York	4520
Universal Bank, Lanham, MD	10/16/92, Chicago	4522

Dated: December 7, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–30300 Filed 12–11–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

BankAmerica Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101

Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to acquire First Associates Financial, Inc., Tampa, Florida, and thereby engage in manufactured housing lending, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30238 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

Federal Open Market Committee; Domestic Policy Directive of August 18, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 18, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is continuing to expand at a subdued pace. Total nonfarm payroll employment rebounded in July after declining in June, and the civilian unemployment rate edged down to 7.7 percent. Manufacturing output was unchanged in July, but overall industrial production was boosted by a higher level of mining and utility output. Retail sales increased moderately in July. Permits issued for the construction of new housing units rose slightly in July, but housing starts fell. Recent data on orders and shipments of nondefense capital goods indicate further increases in outlays for business equipment, while nonresidential construction has remained soft. The nominal U.S. merchandise trade deficit in April-May was substantially above its average rate in the first quarter. Incoming data on wages and prices suggest that inflation is slowing.

Interest rates have declined considerably since the Committee meeting on June 30-July 1. The Board of Governors approved a reduction in the discount rate from 3-1/2 to 3 percent on July 2. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined further over the first several weeks of the intermeeting period, but it has stabilized more recently.

M2 and M3 contracted somewhat further in July. Through July, both aggregates were appreciably below the lower ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting on June 30-July 1 reaffirmed the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The Committee anticipated that developments contributing to unusual velocity increases could persist in the second half of the year. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1993, the Committee on a tentative basis set the same ranges as in 1992 for growth of the monetary aggregates and debt measured from the fourth quarter of 1992 to the fourth quarter of 1993. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through December at annual rates of about 2 and 1/2 percent, respectively.

By order of the Federal Open Market Committee, December 4, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92–30218 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Record of Policy Actions of the Committee for the meeting of August 18, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Brooke Holdings, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 92-29195) published at page 57067 of the issue for Wednesday, December 2, 1992.

Under the Federal Reserve Bank of Kansas City, the entry for Brooke Holdings, Inc. is revised to read as follows:

Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas, parent of Brooke Corporation, Jewell, Kansas; to engage, through a subsidiary known as Mid Kansas Insurance Agency, Inc., Wichita, Kansas, in insurance activities, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Comments on this application must be received by December 16, 1992.

Board of Governors of the Federal Reserve System, December 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30219 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

Citizens Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens Bankshares, Inc., Shawano, Wisconsin; to engage *de novo* through its subsidiary, Wisconsin Finance Corporation, Shawano, Wisconsin, in insurance activities pursuant to § 225.25(b)(8)(i), (ii), and (iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30194 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

Leland P. Cook, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Leland P. Cook, Corsicana, Texas; to acquire an additional 5.88 percent for a total of 16.79 percent, and Byron Cook, Corsicana, Texas, to acquire an additional 5.88 percent for a total of 12.77 percent of the voting shares of Corsicana Bancshares, Inc., Corsicana, Texas, and thereby indirectly acquire Corsicana National Bank, Corsicana, Texas.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30195 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

Exchange National Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 4, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Exchange National Bancshares, Inc., Jefferson City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Exchange National Bank of Jefferson City, Jefferson City, Missouri.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30196 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

Forest Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Forest Bancorp, Forest, Mississippi; to engage *de novo* through its subsidiary, Bankers Capital Corporation, Forest, Mississippi, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30197 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

Bank of Montana System, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 4, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bank of Montana System, Great Falls, Montana; to acquire Montana Bancsystem, Inc., Billings, Montana, and thereby engage in general insurance agency activities in Circle, Roundup, Red Lodge, and Forsyth, Montana, towns with populations of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

2. Marquette Bancshares, Inc., Minneapolis, Minnesota; to acquire Marquette Fund Advisors, Inc., Minneapolis, Minnesota, and thereby engage in serving as investment adviser to an investment company pursuant to § 225.25(b)(4)(ii); and to provide portfolio investment advice to any other person pursuant to § 225.25(b)(4) of the Board's Regulation Y.

3. Norwest Corporation, Minneapolis, Minnesota; to acquire Boris Systems, Inc., East Lansing, Michigan, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30193 Filed 12–11–92; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112392 AND 120492

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
FHP International Corporation, Skandia Group Insurance Company Ltd., Great States Financial Corporation	93–0125	11/23/92
Tenneco Inc., Enron Corporation, Dean Pipeline Company	93–0164	11/23/92
Coda Energy, Inc., Mobile Corporation, Mobil Producing Texas & New Mexico Inc	93–0225	11/23/92
Saratoga Partners II, L.P., Columbia River Television, Inc., Columbia River Television, Inc	93–0230	11/23/92
General Motors Corporation, Continental Airlines Holdings, Inc. (debtor-in-poss.), System One Holdings, Inc., d/b/a System One Corporation	93–0235	11/23/92
Media General, Inc., Robert Maynard and Nancy Hicks Maynard, Maynard Communications, Inc	93–0057	11/24/92
Ruhrgas AG, TI Group plc, Ipsen Entities	93–0147	11/24/92
Raytheon Company, Amber Engineering, Inc., Amber Engineering, Inc	93–0162	11/24/92
Warburg, Pincus Investors, L.P., Berwind Group Partners, Geriatric Pharmacy Systems, Inc	93–0233	11/24/92
Service Corporation International, American Funeral Services Corporation, American Funeral Services Corporation	93–1536	11/24/94
Group Financial Partners, Inc., Alliant Techsystems, Inc., Alliant Techsystems, Inc	93–0145	11/25/92
Penn Virginia Corporation, Sonat Inc., Sonat Exploration Company	93–0205	11/25/92
Arcadian Partners, L.P., PacifiCorp, NERCO Oil and Gas, Inc	93–0180	11/27/92
BTR plc, Edward M. Harvey, Harvey, Inc., and Harvey Industries, Inc	93–0212	11/27/92
American United Global Inc., Tenneco Inc., Case Corporation	93–0208	11/30/92
WMS Industries Inc., Bally Manufacturing Corp., Bally's Aladdin's Castle, Inc	93–0214	11/30/92
Welsh, Carson, Anderson & Stowe V, L.P., Herschel Fisher, M.D., Fischer Mangold, F/M Service Co., Doctor's Essential	93–0227	11/30/92
Welsh, Carson, Anderson & Stowe V, L.P., Karl G. Mangold, M.D., Fisher Mangold, F/M Service Co. and Doctor's	93–0228	11/30/92
ALLTEL Corporation, GTE Corporation, Contel Cellular of Arkansas, Inc	93–0238	11/30/92
CBI Industries, Inc., Emmett J. Lescroart, Cooperheat, Inc	93–0240	11/30/92
SHL Systemhouse Inc., Eastman Kodak Company, Interactive Systems Corporation	93–0241	11/30/92
NEDH Corporation, Nashoba Health Systems, Inc., Nashoba Health Systems, Inc	93–0245	11/30/92
Sysco Corporation, Thomas N. Perloff, P.B. Realty Company, Inc	93–0248	11/30/92
Charterhouse Equity Partners, L.P., Comdata Holdings Corporation, Comdata Holdings Corporation	93–0256	11/30/92
Baxter International Inc., Kelsey-Seybold Clinic, P.A., Kelsey-Seybold Clinic, P.A	93–0268	11/30/92
Household International, Inc., General Motors Corporation, GMAC Capital Corporation	93–0219	12/01/92
Enhance Financial Services Group Inc., Skandia Group Insurance Company Ltd., Vesta American Reinsurance Corporation	93–0223	12/01/92
CUC International Inc., Sally Foster Gift Wrap Sales, Inc., Sally Foster Gift Wrap, L.P	93–0244	12/01/92
Water Street Corporate Recovery Fund I, Edward D. Aster, Aster Publishing Corporation	93–0247	12/01/92
General Electric Company, John Alden Financial Corporation, John Alden Financial Corporation	93–01218	12/02/92
Malcolm I. Glazer, Gilbert/Robinson Holding Corp. (Debtor-In-Possession), Gilbert/Robinson Holding Corp. (Debtor-In-Possession)	92–1426	12/03/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112392 AND 120492—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Daniel K. Frierson, Carriage Industries, Inc., Carriage Industries, Inc	93-0034	12/03/92
Deaconess Care Corporation, Billings Clinic (General Partnership), Billings Clinic (General Partnership)	93-0197	12/03/92
Choctaw II Oil & Gas, Ltd., Pennzoil Company, Pennzoil Exploration and Production Company	93-0217	12/03/92
Ford Motor Company, Chrysler Corporation, Chrysler Rail Transportation Corporation	93-0222	12/03/92
Lyondell Petrochemical Company, Joint Venture Limited Liability Company, Joint Venture Limited Liability Company	93-0185	12/04/92
Petroleos de Venezuela S.A., Joint Venture Limited Liability Company, Joint Venture Limited Liability Company	93-0186	12/04/92
Medeva PLC, Armstrong Pharmaceuticals, Inc., Armstrong Pharmaceuticals, Inc	93-0237	12/04/92
ITT Corporation, The Equitable Companies Incorporated, Equi-Sher, S.D	93-0242	12/04/92
Fukutake Publishing Co., Ltd., Berlitz International, Inc., Berlitz International, Inc	93-0249	12/04/92
Golder, Thoma, Cressey Fund III Limited Partnership, Mr. Frederick B. Hunter, Fred Hunter Memorial Services, Inc., Cremation Society	93-0255	12/04/92
Vereniging AEGON, American Express Company, AMEX Life Assurance Company	93-0278	12/04/92
Louisiana Land and Exploration Company, Phillips Petroleum Company, Phillips Petroleum Production Indonesia, Inc	93-0279	12/04/92
Industrial Bank of Japan, Limited, Kansallis-Osake-Pankki, Kansallis Finance Ltd	93-0286	12/04/92
Gamer Merchant Services Group Limited, Forte PLC, Gardner Merchant Food Services,Inc	93-0287	12/04/92
Genuine Parts Company, Estate of Gertrude R. Berry, The Berry Companies	93-0293	12/04/92
Southwestern Bell Corporation, Southwestern Bell Corporation, Corpus Christi SMSA L.P	93-0297	12/04/92
General Electric Company, Volvo Car Finance, Inc., Volvo Car Finance, Inc.	93-0304	12/04/92
General Electric Company, Eastman Kodak Company, Eastman Kodak Credit Corporation	93-0312	12/04/92
The Fuji Bank, Limited, Sudbury, Inc., Wagner Castings Company	93-0327	12/04/92
SGK Equity Fund, L.P., Joint Venture Corporation, Joint Venture Corporation	93-0333	12/04/92
Matthew G. Stuller, Joint Venture Corporation, Joint Venture Corporation	93-0334	12/04/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580. (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-30304 Filed 12-11-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3405]

Realty Computer Associates, Inc., d/b/a Computer Listing Service; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Missouri-based real-estate multiple listing service (MLS) from refusing to publish exclusive-agency listings, or restricting its members from offering such listings. In addition, the respondent is prohibited from requiring, as a condition of membership or use of its MLS, that any applicant or member engage in real-estate brokerage full time, or that any applicant or member maintain an office located on commercially zoned property or within the respondent's service area.

DATES: Complaint and Order issued November 23, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Miller, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Thursday, September 10, 1992, there was published in the **Federal Register**, 57 FR 41500, a proposed consent agreement with analysis In the Matter of Realty Computer Associates, Inc., d/b/a Computer Listing Service, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-30303 Filed 12-11-92; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Program Announcement 912]

Grants for Injury Prevention and Control Research; Availability of Funds for Fiscal year 1993; Amendment

A notice announcing the availability for Fiscal Year 1993 funds for grants to support Injury Prevention and Control Research was published in the **Federal Register** on April 29, 1992 (57 FR 18154), and amended on August 3, 1992. (57 FR 34140). The notice is further amended as follows:

On page 18156 of April 29, 1992 notice, first column, under section B., delete the heading "Review by senior Federal staff" and insert "Review by Advisory Committee for Injury Prevention and Control."

All other information and requirements of the notice as amended remain the same.

Dated: December 7, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92-30228 Filed 12-11-92; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Availability of Funds for Fiscal Year 1993 Amendment

A notice announcing the availability of Fiscal Year 1993 funds for grants to support Injury Control Research Centers (ICRCs) and Injury Control Research Program Projects (RPPGs) was published in the **Federal Register** on April 7, 1992, [57 FR 11722], and amended on August 3, 1992 [57 FR 34140]. The notice is further amended as follows:

On page 11722 of the April 7, 1992 notice, third column, under the heading "**AVAILABILITY OF FUNDS,**" following the first sentence insert: "An additional $250,000 supplement is available for a demonstration project at an existing ICRC that would provide support for new field studies conducted by new investigators."

On page 11723, first column, under the heading "**PURPOSE,**" insert the following: "I. To support training of new investigators through the design and implementation of applied injury prevention and control projects as a component of the NCIPC's (National Center for Injury Prevention and Control) plan to build and enhance the field of injury control research."

On page 11723, under the heading "**PROGRAM REQUIREMENTS**" following section B., third column, insert the following:

"C. Essential Requirements for Applicants for a New Investigator Pilot Project Demonstration Supplement

1. A nationally recognized injury control research center program with existing ties to schools of medicine, public health and engineering should be in place to facilitate research training.

2. A documented mechanism that provides for the collection, management, and coordination of data necessary for injury control studies should be in place. This would include:

a. External coding of the cause of injury for hospital discharges;

b. Availability of worker compensation records for research purposes;

c. Established trauma center, preferably with a trauma registry, that is part of a research university; and

d. Demonstrated access to, and linkage with, drivers' records, traffic safety records, and criminal justice system reports.

3. An existing relationship with a successful statewide injury control program that will provide for the translation of research findings into community-based intervention programs and evaluation of these injury control interventions should be in place.

4. An established working relationship in a program for community involvement in injury control intervention and for mobilizing and coordinating professional groups and community-based organizations should be in place."

On page 11723, third column, under the heading "**EVALUATION CRITERIA,**" fourth and fifth sentences, delete "senior Federal staff" and insert "the Advisory Committee for Injury Prevention and Control."

On page 11724, second column, section B., delete the heading "Review by Senior Federal Staff" and insert "Review by Advisory Committee for Injury Prevention and Control." In the first sentence of this section, delete the words "senior Federal staff" and insert "the Advisory Committee for Injury Prevention and Control."

All other information and requirements of the notice as amended remain the same.

Dated: December 7, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92-30229 Filed 12-11-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Antibody to Human Immunodeficiency Virus Type 2 (HIV-2) Reference Panel 1; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new FDA reference panel for tests intended to detect the antibody to Human Immunodeficiency Virus Type 2 (HIV-2 Reference Panel 1). FDA recommends that manufacturers of currently licensed HIV-2 and HIV-1/HIV-2 test kits amend their product license to incorporate a lot release testing protocol using the HIV-2 Reference Panel 1.

DATES: FDA recommends that manufacturers amend their product licenses by February 12, 1993.

ADDRESSES: The HIV-2 Reference Panel 1 is available for distribution from Charles O. Roberts, Food and Drug Administration, Center for Biologics Evaluation and Research (HFB-920), 8800 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Charles O. Roberts (address above), 301-227-6721.

SUPPLEMENTARY INFORMATION: The HIV-2 Reference Panel 1 is intended for the qualitative and semiquantitative evaluation of in vitro tests to detect antibody to HIV-2 in human serum or plasma. It is a regulatory test panel of sera designed to provide a lot release criterion for HIV-2 and HIV-1/HIV-2 antibody detection kits produced by licensed manufacturers or by manufacturers pursuing licensure of such kits. The Center for Biologics Evaluation and Research will limit the distribution of the HIV-2 Reference Panel 1 to conserve these reagents when necessary. These reagents should not be used for experimental or other reference purposes. Since the HIV-2 Reference Panel 1 is now available, FDA is recommending that manufacturers amend their product licenses to incorporate a lot release testing protocol using the HIV-2 Reference Panel 1.

Dated: December 1, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-30190 Filed 12-11-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Meeting of the Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior announces a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on January 6 and 7, 1993, at 9:30 a.m., in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, suite 119, Anchorage, Alaska (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by paragraph V.A. 4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91-081 CV. This meeting will include: (1) A status review of the restoration plan and related activities;

(2) a discussion and recommendations for the 1993 restoration work plan and budget; and (3) reports from various working groups.

Dated: December 8, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 92-30287 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[MT-070-03-4210-04; M81796)

Realty Action: Exchange, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Designation of public lands in Beaverhead, Broadwater, Gallatin, Granite, Jefferson, Lewis & Clark, Madison, Missoula, Park and Powell counties, Montana, for possible transfer out of Federal ownership via exchange.

SUMMARY: BLM proposes to exchange isolated public land tracts, with Clearwater Investments, Inc., an Idaho Corporation, as the proponent, in order to achieve more efficient management of the public land through consolidation of ownership and to acquire lands with high natural resource values.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Federal Land Exchange Facilitation Act of January 25, 1988, 43 U.S.C. 1716.

Principal Meridian, Montana

Beaverhead County

T. 5 S., R. 7 W.,
Sec. 19: SE¼NE¼
Sec. 20: E½NW¼, SW¼NW¼, NW¼SW¼
T. 5 S., R. 8 W.,
Sec. 27: SW¼NE¼
T. 5 S., R. 14 W.,
Sec. 32: SE¼SW¼
T. 7 S., R. 9 W.,
Sec. 10: NE¼SE¼
T. 8 S., R. 7 W.,
Sec. 20: SW¼SW¼
T. 9 S., R. 10 W.,
Sec. 20: NE¼NW¼
T. 10 S., R. 15 W.,
Sec. 12: SE¼NE¼
T. 11 S., R. 8 W.,
Sec. 9: NW¼NW¼
T. 11 S., R. 9 W.,
Sec. 3: SW¼NW¼
T. 12 S., R. 9 W.,
Sec. 28: NE¼NE¼
Sec. 34: NE¼NE¼
T. 13 S., R. 4 W.,
Sec. 14: NW¼SW¼
Sec. 21: SE¼SW¼
T. 14 S., R. 3 W.,
Sec. 4: NW¼SW¼
Sec. 15: NW¼NW¼
T. 14 S., R. 8 W.,
Sec. 1: Lots 1 & 2
Sec. 9: NW¼SE¼
T. 14 S., R. 9 W.,
Sec. 25: SE¼NW¼
T. 15 S., R. 11 W.,
Sec. 22: SE¼SE¼
Sec. 23: NW¼NE¼, E½NW¼, N½SW¼, SW¼SW¼
Sec. 26: NW¼NW¼
Sec. 27: N½N½
Sec. 28: N½NE¼

Broadwater County

T. 3 N., R. 1 E.,
Sec. 12: NW¼

Gallatin County

T. 1 S., R. 1 E.,
Sec. 14: NW¼NE¼
T. 1 S., R. 2 E.,
Sec. 33: E½SW¼, SW¼SE¼
T. 2 S., R. 2 E.,
Sec. 3: NE¼SW¼
T. 2 N., R. 3 E.,
Sec. 8: SE¼NE¼
Sec. 20: NW¼, W½SW¼, E½SE¼
T. 3 N., R. 3 E.,
Sec. 34: SE¼SW¼

Granite County

T. 5 N., R. 14 W.,
Sec. 18: S½SE¼SE¼
T. 5 N., R. 15 W.,
Sec. 6: Lot 1
Sec. 20: N½SW¼, SE¼SW¼
Sec. 30: Lots 3, 4, W½NE¼, SE¼NE¼, E½SW¼
T. 6 N., R. 15 W.,
Sec. 26: NE¼SE¼
Sec. 35: NE¼SE¼
T. 7 N., R. 14 W.,
Sec. 18: Lots 2, 3, 4, E½SW¼
Sec. 20: S½S½
Sec. 30: N½NE¼, E½SW¼, SE¼
T. 7 N. R. 15 W.,
Sec. 13: NE¼NE¼
Sec. 24: W½SE¼, SW¼
Sec. 25: NW¼NE¼, NE¼NW¼
Sec. 32: NW¼NW¼
T. 9 N., R. 13 W.,
Sec. 17: N½NW¼, SE¼NW¼, NE¼SW¼
T. 9 N., R. 14 W.,
Sec. 20: Lots 1, 2, W½NE¼, NE¼NW¼, S½NW¼
Sec. 32: SE¼SE¼
T. 11 N., R. 12 W.,
Sec. 22: NE¼
T. 11 N., R. 14 W.,
Sec. 3: Lot 11
Sec. 6: Lots 1, 2, 3, 7, SE¼SW¼, SE¼
Sec. 18: Lots 1, 2, 7, 8
T. 11 N., R. 16 W.,
Sec. 12: Lot 2
T. 12 N., R. 13 W.,
Sec. 30: Lots 2, 3, 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼

Jefferson County

T. 2 N., R. 5 W.,
Sec. 14: SW¼
Sec. 24: NW¼, SE¼NE¼
T. 7 N., R. 3 W.,
Sec. 17: Lot 24
T. 8 N., R. 3 W.,
Sec. 4: Lot 7
Sec. 5: Lots 31 & 32
Sec. 7: Lot 6
Sec. 9: SE¼NE¼
Sec. 10: Lots 1, 6, 7, 10, 11, 16
Sec. 32: NW¼NW¼NW¼
T. 8 N., R. 4 W.,
Sec. 15: SE¼SW¼

Lewis & Clark County

T. 11 N., R. 5 W.,
Sec. 29: Lot 9, 10, 11
T. 12 N., R. 6 W.,
Sec. 5: SE¼SW¼
T. 13 N., R. 6 W.,
Sec. 17: SE¼SE¼
Sec. 22: NE¼SW¼
T. 14 N., R. 3 W.,
Sec. 34: Lot 17

Madison County

T. 1 S., R. 2 W.,
Sec. 18: Lot 4
Sec. 22: S½SW¼
T. 1 S., R. 3 W.,
Sec. 14: NW¼
T. 1 S., R. 6 W.,
Sec. 32: NW¼
T. 2 S., R. 5 W.,
Sec. 28: NE¼, N½SE¼
T. 2 S., R. 1 E.,
Sec. 32: SE¼NW¼
T. 3 S., R. 1 W.,
Sec. 3: Lots 1 & 2
Sec. 35: SW¼SW¼
T. 3 S., R. 6 W.,
Sec. 7: Lot 4, NE¼SW¼, N½SE¼
Sec. 18: Lots 1, 2, 3, NE¼NW¼
T. 4 S., R. 1 W.,
Sec. 2: SW¼NE¼, NW¼SE¼
T. 4 S., R. 5 W.,
Sec. 13: NW¼SE¼
T. 4 S., R. 7 W.,
Sec. 22: S½SE¼
Sec. 26: NW¼NE¼, W½
T. 5 S., R. 3 W.,
Sec. 30: S½NE¼
T. 5 S., R. 4 W.,
Sec. 6: Lot 4
T. 6 S., R. 6 W.,
Sec. 14: SE¼SW¼, N½SE¼, SW¼SE¼
Sec. 22: Lot 1
T. 7 S., R. 5 W.,
Sec. 26: NW¼NW¼
T. 7 S., R. 6 W.,
Sec. 34: S½SW¼
T. 7 S., R. 7 W.,
Sec. 2: NE¼SE¼
Sec. 26: SE¼SW¼
Sec. 27: NW¼SE¼
Sec. 35: NW¼NW¼
T. 8 S., R. 4 W.,
Sec. 15: Lot 2
T. 8 S., R. 5 W.,
Sec. 15: NW¼NE¼

Madison County continued

T. 8 S., R. 6 W.,
Sec. 17: NW¼NE¼, NE¼NW¼
T. 9 S., R. 5 W.,
Sec. 17: E½NE¼
Sec. 29: NW¼NE¼
T. 9 S., R. 6 W.,
Sec. 1: S½SW¼
Sec. 12: SW¼SE¼

Missoula County

T. 12 N., R. 15 W.,
Sec. 18: Lot 1, NE¼NW¼
T. 13 N., R. 17 W.,
Sec. 8: SW¼NE¼, NW¼SE¼

Park County

T. 1 S., R. 11 E.,
Sec. 10: W½SW¼
T. 2 S., R. 9 E.,
Sec. 4: Lots 3, 4, S½NW¼
Sec. 34: W½SE¼
T. 2 S., R. 12 E.,
Sec. 18: SE¼SE¼
Sec. 27: NE¼NE¼
T. 4 S., R. 9E.,
Sec. 20: W½SE¼, SE¼SE¼
Sec. 30: Lots 3, 4, E½SW¼
Sec. 32: NW¼SW¼
T. 1 N., R. 10 E.,
Sec. 12: E½NE¼
T. 5 N., R. 9 E.,
Sec. 20: E½
Sec. 32: E½W½

Powell County

T. 9 N., R. 6 W.,
Sec. 20: Lot 4, E½SE¼
T. 9 N., T. 7 W.,
Sec. 8: Lot 4, S½SE¼
T. 9 N., R. 8 W.,
Sec. 8: W½SW¼, SE¼SW¼, SW¼SE¼
Sec. 10: N½NW¼, SW¼NW¼, SE¼SW¼
T. 9 N., R. 9 W.,
Sec. 14: SW¼NW¼
T. 10 N., R. 6 W.,
Sec. 8: Lot 1, NW¼NW¼
Sec. 14: SE¼SE¼
Sec. 15: E½SE¼
Sec. 34: E½NE¼
T. 10 N., R. 7 W.,
Sec. 24: Lot 2
T. 10 N., R. 9 W.,
Sec. 4: Lots 3 & 4
Sec. 14: W½
Sec. 18: Lots 1, 2, 3, 4, 5, 6, NE¼, NE¼NW¼, NE¼, SW¼, NW¼SE¼
T. 10 N., R. 10 W.,
Sec. 12: SE¼SW¼, S½SE¼
T. 10 N., R. 11 W.,
Sec. 14: NW¼SE¼
T. 11 N., R. 9 W.,
Sec. 34: S¼, SW¼, NE¼
T. 11 N., R. 10 W.,
Sec. 18: N½NE¼, SE¼NE¼
T. 12 N., R. 10 W.,
Sec. 2: Lots 3 & 4
Sec. 3: W½SW¼SE¼
Sec. 24: Lot 1
T. 12 N., R. 11 W.,
Sec. 6: Lots 1 & 4, SE¼NW¼, SW¼NE¼
Sec. 12: NE¼SW¼, W½SE¼, SE¼SE¼
Sec. 14: W½SW¼, SE¼SW¼, E½SE¼
Sec. 22: Lot 1
Sec. 25: SE¼SW¼
T. 12 N., R. 12 W.,
Sec. 8: E½W½
T. 13 N., R. 11 W.,
Sec. 32: SE¼SW¼
T. 13 N., R. 12 W.,
Sec. 9: Lots 1, 2, 3, 4, SW¼SW¼, N½SE¼
Sec. 15: Lot 1
Sec. 22: NW¼NW¼, SE¼SW¼
Sec. 23: NW¼NE¼, NW¼, NW¼SW¼
Sec. 26: NW¼NW¼, S½SW¼
T. 14 N., R. 13 W.,
Sec. 6: Lot 2
T. 15 N., R. 13 W.,
Sec. 32: S½SW¼

The lands described above are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register.** The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or five years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an Environmental Assessment. Upon completion of the Environmental Assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATE: For a period of 45 days from the date of publication in the **Federal Register,** interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, MT 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Butte District Office.

Dated: December 4, 1992.

James R. Owings,

District Manager.

[FR Doc. 92–30244 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–DN–M

[UT–930–03–4333–04]

Recreation Management Restrictions: Occupancy Stay Limitation

AGENCY: Bureau of Land Management, Interior.

ACTION: Policy Statement

SUMMARY: This notice establishes occupancy stay limits on public lands managed by the Bureau of Land Management (BLM) in Utah. Notice is given that a person or persons may not occupy undeveloped public lands or designated sites or areas for more than 14 days within a 28-consecutive-day interval. The 14-day limit may be reached either through a number of individual visits or through 14 days of continuous occupation during the 28-day interval. A 28-day interval begins when an occupant initially occupies a specific site on public land. Beyond the 14-day period, occupation of another site shall not be within a 30-mile radius of the heretofore occupied location. When the 14 days have been reached, site occupation shall not reoccur until at least 14 days have expired from the last day of use. Under unique circumstances, and upon request by the site occupant, an authorized officer may give written permission for an extension of the 14-day limit.

In order to protect resources, or for other administrative purposes, an authorized officer may, by posting notification, close a given site to occupancy, even if the same person or persons have not occupied the site for 14-consecutive days. In this situation, upon notification by an authorized officer, campers and other occupants may be allowed to change to a reasonably proximate site within a 30-mile radius.

Additionally, a person or persons may not keep unattended personal property on public lands for a period of more than 48 hours without written permission from an authorized officer, with the exception that vehicles may be parked in designated parking areas for up to 14 consecutive days.

This occupancy limitation rule does not apply to Long Term Visitor Use Areas which may be so designated by the BLM in the future.

DATES: This occupancy limitation rule will take effect January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret S. Kelsey, Bureau of Land Management, Utah State Office, 324 South State Street, suite 301, Salt Lake City, Utah 84111–2303.

SUPPLEMENTARY INFORMATION: This public land occupancy limitation rule is being established to reduce user conflicts caused by long-term occupancy done under a recreational pretense which, nevertheless, hampers reasonable opportunities for other members of the general public to camp in or use the same area. In addition, long-term occupancy precipitates vegetation trampling, erosion, wildlife disruption, and improper waste disposal among other problems, all of which were considered significant factors in the institution of this rule.

Authority for this pubic land occupancy limitation rule is contained in CFR title 43, chapter II, part 8360; subparts 8364.1, 8365, 8365.1–2, 8365.1–6, and 8365.2–3.

Definitions

(a) *Occupation:* Taking or holding possession of a camp or residence on public land.

(b) *Camp or camping:* Erecting a tent or shelter of natural and/or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the presumable purpose of overnight occupancy.

(c) *Public lands:* Any lands or interest in lands owned by the United States and administered by the Bureau of Land

Management without regard to how the United States acquired ownership.

(d) *Authorized officer:* Any employee of the Bureau of Land Management who has been assigned the authority to perform under Title 43 of the Code of Federal Regulations.

(e) *Designated sites or areas:* Areas or sites that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include features such as: defined spaces for parking, camping or boat launching, sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

Penalties

Violations of this rule by a member of the public are punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

G. William Lamb,

Associate State Director.

[FR Doc. 92-30202 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-940-03-4210-02]

Notice of Scoping; Road Rights-of-Way Under Revised Statute 2477

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management is preparing a report to Congress concerning the history, as well as current and future administration of road rights-of-way granted under the provisions of Revised Statute 2477 (R.S. 2477). This statute was repealed with the enactment of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), but valid existing rights were protected. The report will address the impacts of current and potential claims of R.S. 2477 rights-of-way and possible alternative methods for assessing the validity of such claims, and alternatives to obtaining rights-of-way. Public input from all Western public land states and other affected interests is being sought.

SUPPLEMENTARY INFORMATION: Conference Report 102-901, which accompanied the 1993 Appropriations Act for the Department of the Interior and related agencies, directed the Department of the Interior to report to the appropriate Congressional committees on the following aspects of the management of R.S. 2477 rights-of-way. Input regarding all of the information listed below is requested from all Western public land states and affected interests.

1. The likely impacts of current and potential claims under R.S. 2477 on: The management of Federal lands; access to Federal lands, private lands, State lands, Indian and Native lands; and multiple use activities.

2. The current status of claims under R.S. 2477.

3. Possible alternatives for assessing the validity of claims under R.S. 2477.

4. Possible alternatives to obtaining rights-of-way.

Other significant aspects of the report include the following:

The Bureau of Land Management has been charged with the preparation of this report, which will be completed by a task force based in the Utah State Office, and supplemented by additional Bureau of Land Management task force members from other Western public land states and representatives from other Federal land managing agencies.

There are two phases of work associated with this report which must be submitted to Congress by May 1, 1993. The first phase is information gathering, and will consist of internal research, requests for written input from the public, and scoping meetings to gather additional information. The information gathering phase will end on January 4, 1993. Examples of the types of information desired include:

—Historical information on legislative intent of R.S. 2477 and the Federal Land Policy and Management Act;
—Regulations, policy and guidance on handling assertions of rights under R.S. 2477;
—State statutes in effect since the passage of R.S. 2477 and dates of repeal, if applicable;
—Case law related to this subject;
—Status of current claims under R.S. 2477;
—Impacts on the multiple use activities and management of Federal lands;
—Alternatives for assessing the validity of claims, and anticipated impacts;
—Alternatives for obtaining rights-of-way, and anticipated impacts;
—Any other issues or concerns.

The second phase is reporting, where public input and data collection will be used to prepare a draft report that will include legislative history, issues and concerns, impacts to public and private lands/interests, analysis of alternative methods of assessing the validity of R.S. 2477 claims, and alternatives to obtaining rights-of-way. There will be public hearings associated with this phase of the report, tentatively planned for March 1993, in Salt Lake City, Utah and Fairbanks and Anchorage, Alaska.

Any group or individual desiring to provide input into the preparation of this report or interested in receiving a copy of the draft report, can be put on the mailing list by writing to the R.S. 2477 Project listed below. Anyone submitting material for the information gathering stage will automatically be added to the mailing list.

FOR FURTHER INFORMATION CONTACT: Ted Stephenson or Terry Catlin, R.S. 2477 Project, Utah State Office BLM, P.O. Box 45155, Salt Lake City, Utah 84145-0155; Telephone (801) 539-4105.

Ted D. Stephenson,

R.S. 2477 Task Force Leader.

[FR Doc. 92-30201 Filed 12-11-92; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Convention on International Trade in Endangered Species of Wild Fauna and Flora; Conservation of the Rhinoceros; Twenty-Ninth Meeting of the Standing Committee; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The world's total population of the five living species of rhinoceroses is now estimated to be less than 10,000 in the wild and 1,000 in captivity, an 85 percent decline since 1970, and the African black rhino in particular is now undergoing a catastrophic population crash. This notice requests comments on a number of potential rhinoceros conservation actions proposed for the consideration of party countries to the Convention on International Trade in Endangered Species (CITES), in preparation for a proposed meeting of rhinoceros range states and assistance donors in Kenya, in February or March, 1993, and on both rhinoceros and other CITES issues to be taken up at the Twenty-Ninth Meeting of the CITES Standing Committee, to be held in Washington, DC, in March. It also requests comments on what action should be taken in response to a petition from two conservation organizations requesting certification of Asian rhino horn trading countries under the Pelly Amendment to the Fishermen's Protective Act.

DATES: A public meeting will be held at 1 p.m. on Thursday, 21 January 1993, in the North Penthouse, Main Interior Building, 18th and C Streets, NW., Washington, DC. The Fish and Wildlife Service (Service) will consider written comments received by 29 January 1993.

ADDRESSES: Comments should be submitted to the Director in care of the Chief, Office of Management Authority,

4401 Fairfax Drive, room 432, Arlington, Virginia 22203, telefax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority at the above address, telephone 703–358–2093.

SUPPLEMENTARY INFORMATION:

Background

Four of the world's five species of rhinos are among the most highly endangered of all living mammals, due to poaching for their exceedingly valuable horn, as well as the loss of their habitats as a result of human population growth throughout Africa and Asia. A recent report by the TRAFFIC Network (an international wildlife trade monitoring organization based in Cambridge, England) estimates the following remaining populations of each species:

1. Javan rhino (*Rhinoceros sondaisuc*): Less than 80 animals, confined to a single isolated peninsula in Western Java, Indonesia;

2. Sumatran rhino (*Dicerorhinus sumatrensis*): 500–900 animals, declining throughout its Southeast Asian range due to deforestation and hunting;

3. Great one-horned rhino (*Rhinoceros unicornis*): About 2,000 in Nepal and the Indian states of Assam and West Bengal, hopefully stable but subject to periodic poaching;

4. Black rhino (*Diceros bicornis*): Currently undergoing a catastrophic population decline, with even TRAFFIC International's July 1992 estimate of 2,400-already down from 3,500 a year ago and 65,000 in 1970-now appearing to be too high, based on the most recent reports from Zimbabwe, the country with the largest remaining population but also the highest rate of poaching;

5. White rhino (*Ceratotherium simum*): About 5,000 members of the Southern subspecies (*C. s. simum*) in South Africa represent the only rhino taxon which currently seems secure (but still vulnerable), and the northern subspecies (*C.s. cottoni*) has been reduced to less than 30 animals in a single park in Zaire.

Because of their imperiled or vulnerable status, in 1973 all five rhino species were listed in Appendix I of the Convention on International Trade in Endangered Species (CITES), and all except the Southern subspecies of the white rhino (*Ceratotherium simum*) are also now listed as endangered species under the U.S. Endangered Species Act. However, the prohibitions on international commercial trade attendant to the CITES Appendix I listing have not been effectively implemented, and rhino populations have continued to decline. Rhino horn is highly prized in North and South Korea, Taiwan, and China as a fever-reducing drug, and in Yemen for ceremonial dagger handles. Unfortunately, as rhino populations have plummeted the price paid for horn has risen, so that it is now more valuable than gold. Rhino range states, most of which are among the world's poorest countries, have been unable to halt the activities of poachers and the middlemen who pay them for illegally taken horn. Many of the Asian rhino horn consumers who ultimately drive the cycle of poaching live in wealthier societies and can afford to pay ever higher prices for a mystically valued and increasingly scarce commodity.

At the third CITES Conference of the Parties in 1981 in India, recognizing that the Appendix I trade prohibitions had not stopped the poaching and illegal trade, the party countries adopted resolution Conf. 3.11, calling on the CITES Secretariat to urge both party and non-party countries to halt all international trade in rhino products. When it became clear that this resolution had not been successful, at the sixth Conference of the Parties in 1987, in Ottawa, Canada, the parties adopted a stronger resolution Conf. 6.10, which called for a complete prohibition on all domestic and international trade in rhino products (other than legal hunting trophies); use of economic, political, and diplomatic pressure on countries continuing to allow trade; the destruction of all government and parastatal stocks of horn; increased law enforcement action against poachers and traders; encouragement of the use of substitutes for rhino horn; and development of rhino conversation strategies.

Actions taken to implement the Ottawa resolution were also not sufficient to stop the rhinos' decline. However, there was little opportunity for discussion of the rhino trade at the next CITES Conference in Switzerland in 1989, due to the time consumed by the debate on the status of the African elephant and the ivory trade. The rhino discussion was resumed at the 1992 CITES Conference in Kyoto, Japan, where the Southern African nations proposed to open up legal, sustainable trade in rhino horn removed from living animals as part of a captive breeding or ranching operation, in conjunction with the sale of stockpiles of rhino horn, as a means of raising funds for rhino conservation programs. These proposals were rejected because the majority of party countries felt that they did not meet CITES' criteria for such down-listing actions. Nevertheless, the parties engaged in a general discussion of the critical need for further action, ranging from innovative methods of legalizing (and hopefully controlling) the trade to the imposition of sanctions against the Asian rhino horn consuming countries and entities. No agreement was reached, and so the issue was carried over to CITES committees scheduled to meet later in the year.

At its June, 1992 meeting in Switzerland, the CITES Standing Committee adopted a resolution calling for a number of rhino conservation actions which are detailed below. The United States, as a member of the Standing Committee, supported the adoption of this resolution, and also participated actively in a further discussion of rhino alternatives at the July meeting of the CITES Animals Committee in Zimbabwe. The Animals Committee developed an expanded list of potential conservation measures which the parties should consider (also detailed below). Finally, in August, the Executive Director of the United Nations Environmental Program (UNEP), at the urging of the CITES Secretary General, decided to convene a conference of rhino range states and potential donors (both governmental and non-governmental), to take place at the UNEP headquarters in Nairobi, Kenya, in January, 1993. UNEP also decided to send a rhino trade expert on a mission to key rhino range states and consumers—including Zambia, Zimbabwe, South Africa, Namibia, Hong Kong, Taiwan, Korea, United Arab Emirates, and Yemen—to help close down the trade in illegal rhino horn. He will also urge Yemen and Korea to become parties to CITES. A report detailing the results of the mission and making recommendations is expected to be available by January, 1993.

The first CITES Asian Region Meeting was held in Thailand in early November, 1992. Participating countries expressed profound alarm at the precipitous decline of rhino populations worldwide, and called on all consuming countries to abide by the resolutions adopted at the 1987 Ottawa CITES Conference and at the June, 1992 Standing Committee Meeting.

Potential Conservation Measures, Including Pelly Amendment Certification

The CITES Standing Committee and Animals Committee meetings discussed above each developed lists of potential rhino conservation actions for consideration by the parties. Some of these actions are identical to those recommended in the New Delhi and

Ottawa CITES resolutions, but others are new, innovative, or even unprecedented. The Service has already started an internal review of these and other actions which it might undertake to address this critical situation, and is actively soliciting further information and views from all knowledgeable organizations and individuals.

In addition, on 12 November 1922, the World Wildlife Fund and the National Wildlife Federation submitted a petition to the Secretary of Interior, requesting that China, South Korea, Taiwan, and Yemen be certified to the President under the terms of the Pelly Amendment to the Fishermen's Protective Act because of their continuing involvement in the rhino horn trade. The petition outlines evidence that these nations together are responsible for creating the demand which has resulted in the death of over 60,000 rhinos since 1944. Since this petition addresses actions which are included in the second recommendation of the CITES Standing Committee resolution, it is discussed in category 2, below.

The CITES Standing Committee resolution asks all party nations to:

1. Make the rhino trade a special project for Standing Committee activities leading up to the Ninth Conference of Parties (COP9): The twenty-ninth meeting of the Standing Committee will take place in Washington, DC, in March, 1993, and the Ninth Conference of the Parties will take place in the United States in the second half of 1994. As host country for both meetings, the United States, represented by the Service in close cooperation the Department of State, will strongly support efforts by the Standing Committee Chairman, the CITES Secretary General, and CITES party countries to keep rhino alternatives at the forefront of agenda items for each meeting.

2. Use their influence with other party and non-party governments to convince them to constrain illegal trade and to acquire and destroy stockpiles of illegal rhino horn, with failure of trading governments to take such action viewed as a serious infraction likely to result in calls for trade bans or appropriate actions: The existence of huge stockpiles in Asia derived from poached, illegally exported horn is one of the greatest obstacles to gaining control of the current situation, whether the desired outcome is immediate cessation of all trade, tapering off of trade gradually during an interim educational and cultural adjustment period, or eventual institution of a new, legal trade. However, in view of the large social and economic value of these stockpiles, substantial international incentives or pressure will be needed to get governments involved to undertake effective registration, confiscation, or destruction programs.

On 12 November 1992 the Presidents of the World Wildlife Fund and the National Wildlife Federation petitioned the Secretary of Interior to invoke the Pelly Amendment to the Fishermen's Protective Act of 1967 against these countries. The petition outlines evidence that the continuing rhino horn trade in these four countries has resulted in the death of more than 60,000 rhinos (85 percent of the world's rhino population) since 1970. All four continue to allow internal rhino horn trade for medicinal purposes, or in the case of Yemen, for traditional dagger handles. Korea, Yemen, and Taiwan are not parties to CITES and are thus not bound by its trade prohibitions; China, while it is a CITES party, can never achieve any real control of imports, the petitioners contend, as long as it continues to allow a thriving internal trade.

WWF and NWF argue that this ongoing trade warrants certification to the President that these four countries are undermining the effectiveness of CITES. The Pelly Amendment calls for the Secretary of the Interior to make such a certification whenever he determines that the nationals of a country are engaged in taking or trade which undermines the effectiveness of any international program for the protection of endangered species; the legislative history of the Pelly Amendment specifically mentions CITES as one of the international programs covered by the law. Once certification is made, the President has discretionary authority to impose certain import restrictions; certification can be terminated only if the actions which precipitated the certification are ended. The Service seeks all available information about the rhinoceros trade and about what action the Secretary of the Interior should take on the petitioned Pelly Amendment certification of these four countries.

3. Support and encourage agencies and countries which are working towards rhino conservation compatible with CITES: The Service is continuing close contacts with rhino range countries. Over the past three years, a number of Service grants to African nations for elephant conservation under the African Elephant Conservation Fund (AECF) have had significant secondary benefits to rhino protection, through enhancement of anti-poaching capabilities; the Service is now considering changing the criteria for award of grants under the AECF during Fiscal Year 1993 to give priority to projects having rhino, as well as elephant, benefits. Recent Service contacts with African nations experiencing heavy poaching has indicated that field priorities are for training of anti-poaching forces, providing aircraft for surveillance and communications equipment, and better cross-border coordination of anti-poaching efforts. Asian countries, at the recent Asian Regional CITES Meeting, called for increased financial and technical assistance to range states.

4. Direct the CITES Secretariat to collect information on the rhino trade; to make contacts with party and non-party nations to urge control of the trade, education of the public, and research on substitutes for rhino horn; to provide support to range countries; and to urge re-opening of a TRAFFIC office in Taiwan to monitor wildlife trade, including rhino horn. The UNEP-sponsored mission to key African and Asian countries, which was conceived after the Standing Committee meeting, will result in a new report on the state of conservation and trade, and the TRAFFIC Network has suggested that exiting information may be sufficient for decision-making. The Nairobi rhino conference will provide an opportunity for assessment of whether there is the need—or the time—for undertaking new studies. (See also the discussion of other *research* activities below, under the CITES Animals Committee recommendations.) The Service will continue to encourage the Secretariat to use its offices with party countries to effect trade controls, and will consider all of the measures discussed in this notice to effect similar changes in non-parties. The U.S. has already agreed to consider financial support to the re-opening of the TRAFFIC office in Taiwan.

Using these Standing Committee recommendations as a starting point, the CITES Animals Committee recommended that CITES parties also consider:

5. Undertake field Management actions, including endorsement of current dehorning and translation programs; support for installation of breeding nuclei in areas safe from poaching; creation of incentive systems for detecting poachers; use of sport-hunting as a management and revenue-enhancing technique and acceptance of "dehorning" safaris: No Service or other U.S. government funds have so far been provided specifically for rhino dehorning or translocation projects in Africa, nor have any funds from the

fiscal year 1993 appropriation been identified which could be used for such projects. However, if available evidence indicates that dehorning or translocation is feasible and is likely to reduce the level of poaching, the Service could work with other agencies to encourage these programs. Previous Service grants for African Elephant conservation projects have included establishment of incentive awards for anti-poaching forces, undoubtedly benefiting rhinos as well as elephants; the Service could revise its African Elephant Conservation Fund guidelines for fiscal year 1993 to emphasize projects which address the needs of both species. Regarding trophy imports, the Service already allows import of sport-hunted white rhinos taken in South Africa, having determined that these animals are not endangered and that the hunting program generates revenues which are used to enhance the conservation of the species. Consideration could be given to allowing the non-commercial import of rhino horn trophies taken during safaris where the hunter has paid to participate in tranquilizing and dehorning of animals; the trophy fees would help pay for the operation, and after dehorning animals would be released unharmed and hopefully undesirable to poachers. However, no permit applications have so far been received, and the Service needs more information on the success of dehorning programs.

6. Encourage trade and law enforcement actions, including: recognition of the potential benefits of sanctioned trade, within a law enforcement framework of tight control; and implementation of import/export legislation and improved controls of stockpiles of rhino horn, including registration: Some range countries are reportedly considering a sale of their stockpiles of horn (obtained from animals found dead or confiscated from poachers) in order to gain funds needed for rhino protection programs; some believe that this might also temporarily depress the price for illegal horn, perhaps also reducing poaching. Without a significant change in CITES policy, however, such transactions would be considered to be serious CITES infractions. In addition, it is also possible that Asian traders dedicated to building their stockpiles against the day when all rhinos are gone might be willing to buy all available legal horn while still financing poaching operations. The UNEP expert's new report on the rhino trade may shed further light on the possible market effects of such a one-time sale. An alternative would be acquisition of stockpiles by other governments or by private organizations desiring to remove them from commercial trade. The Service also needs more information on whether it should support non-commercial acquisition of stockpiles, or their use in highly regulated transition programs which would provide for a gradual tapering off of internal commercial use as education programs proceed; as noted previously, total inventory and government control of stockpiles would be a prerequisite in either case.

Rhino horn can be periodically harvested from living animals, like vicuna wool (and unlike elephant ivory); the institution of a long-term, sustainable, legal trade from dehorned animals could provide a stable source of income for rhino conservation, provided dehorning does not have unintended, adverse effects on rhino behavior and survival. However, such trade would not be legal under the current the CITES Appendix I listing of all rhino species, and it could also reinforce demand for poached horn and provide the cover for the continuation of illegal trade. For a legal trade program to succeed, the long-term biological effects of dehorning would have to be evaluated. In addition, range countries would have to make a firm commitment to the use of revenues received for rhino conservation, rather than for the many other competing social and economic priorities which these nations face.

Particular attention would have to be given to improving wildlife law enforcement capabilities, including uncompromising action against middlemen who put poachers into the field, and perhaps coordinated cross-border operations and/or treaties allowing "hot pursuit" across these borders. The Service strongly supports extradition of poachers fleeing across international borders; consideration could also be given to proposals for establishing regional anti-poaching forces which could be deployed at the request of countries experiencing critical poaching or illegal trade problems. Finally, rhino horn consuming nations could show their will and competence to gain control of their existing stockpiles and control future imports, whether motivated by the threat of multilateral or unilateral trade sanctions or the incentive of future legal trade. The Service seeks more information on what specific enforcement actions these countries should take.

7. Conduct short-term research projects on rhino conservation and trade: The Service can encourage research projects which address immediate questions about the conservation needs and the rhino horn trade, in Asia as well as in Africa. The CITES Standing Committee Chairman has suggested that CITES parties should concentrate on "assessing the consequences of legalizing a controlled trade in horn from dehorning sources * * * attendant upon any COP9 approval by parties to down-listing rhino horn from dehorning", either through immediate new studies or through utilization of existing work already done on stockpiles, markets, etc. More information is needed about research priorities, such as assessment of the success of dehorning operations and other protection strategies, determining the demand for rhino horn, and predicting the likely outcome of various conservation alternatives. While granting the urgent need for short-term research, the Service also seeks information about how long-term research, the Service also seeks information about how long-term research and conservation measures should be developed, particularly in view of the length of time which may be required for law enforcement and educational programs to produce a reduction is demand.

8. Initiate public awareness programs to promote understanding and new approaches, and including rhino conservation in all CITES seminars: The Service believes that public awareness programs must be culturally based to appeal to the motivations most appropriate for the particular society involved; Asian governments could show that they are taking responsibility for the effects of their rhino horn consumption by immediately developing and implementing educational programs to bring about changes in the attitudes of their citizens. Under current conditions, the supply of horn will be exhausted by the continuing demand; the Service seeks information on how these countries can reverse this situation and reduce the demand *before* the wild populations of rhinos completely disappear.

At the recent Asian CITES Regional Meeting, the Service participated and played an active role in the adoption of an initiative to monitor the rhino horn trade; Asian countries also appealed to all consuming countries to abide by CITES resolutions—particularly resolution 6.10 and the June Standing Committee resolution—and cease all trade. This is particularly significant since the three rhino species native to Asia together exist in lower numbers than the two African species (though the gap is closing), and all of the rhino

poaching in Africa or Asia is ultimately the result of Asian demand. The Service, through its close working relationship with the CITES Secretariat, the United States membership on the Standing Committee, and its participation in the Animals Committee and other meetings, will work with the CITES Secretariat to encourage the inclusion of the rhino issue in similar international meetings in the future.

Twenty-Ninth Meeting of the CITES Standing Committee

The Service, with the assistance of the Department of State, will be hosting the Twenty-ninth Meeting of the CITES Standing Committee in Washington, DC, from 1–5 March 1993, coinciding with the twentieth anniversary of the negotiation and signing of CITES, at a plenipotentiary conference in Washington, DC, on 3 March 1973. While the Standing Committee meeting is an executive session not open to the public, the Service anticipates that there will be a public announcement or event, as well as a ceremony for Standing Committee members and party country observers, to commemorate the CITES anniversary during the week. In addition, although the agenda of substantive issues for the meeting has not yet been developed, it will undoubtedly include rhino conservation options and a number of other CITES issues of general interest. Thus the Service is also seeking comments and suggestions on such as issues as: Development of new criteria for listing of species on CITES appendices; review and revision of CITES resolutions; regulation of wildlife trade in Italy and Thailand; and other ongoing CITES issues. The agenda for the meeting will be available from the Service's Office of Management Authority (see **ADDRESSES** section) as soon as it has been received. It will also be distributed at the public meeting discussed below.

Public Comments Solicited

The Service requests comments from all interested organizations and individuals on all of the potential rhino conservation activities suggested by CITES committees, on the petitioned certification of these countries under the Pelly Amendment, on any other rhino conservation measures not addressed in the discussion, and on the other CITES issues discussed above relevant to the Standing Committee meeting. Comments should be sent to the address given above (see **ADDRESSES** section) by 29 January 1993 in order to ensure their consideration. The Service will also hold a public meeting to solicit information and views on these issues, as well as other CITES issues relevant to the March meeting of the CITES Standing Committee, at 1 p.m. on 21 January 1993 in the North Penthouse of the Main Interior Building, 1849 C Street, NW., Washington, DC.

Author

The primary author of this notice is Marshall P. Jones, Chief, Office of Management Authority (telephone 703/358–2093).

Dated: November 25, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30223 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material law be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0063), Washington, DC 20503, telephone 202–395–7340.

Title: Coal; Production and Reclamation Fee Report, OSM–1

OMB Number: 1029–0063

Abstract: This Part requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None

Frequency: Monthly

Description of Respondents: State Regulatory Authorities

Estimated Completion Time: 4 hours

Annual Responses: 170,580

Annual Burden Hours: 622,500

Bureau Clearance officer: John A. Trelease (202) 343–1475

Dated: October 8, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92–30239 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0051), Washington, DC 20503, telephone 202–395–7340.

Title: Permanent Program for Inspection and Enforcement—30 CFR part 840

OMB Number: 1029–0051

Abstract: In order to ensure compliance with 30 CFR part 870, a quarterly report is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.

Bureau Form Number: OSM–1

Frequency: Quarterly

Description of Respondents: Coal mine and coal preparation plant operators

Annual Responses: 15,000

Annual Burden Hours: 4,089

Estimated Completion Time: 16 mins

Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: October 8, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92–30240 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32035]

Fox Valley & Western Ltd.—Exemption, Acquisition and Operation—Certain Lines of Green Bay and Western Railroad Co., Fox River Valley Railroad Corp., and the Ahnapee & Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.*, the acquisition by Fox Valley & Western Ltd. of substantially all of the assets of the Fox River Valley Railroad Corporation, the Green Bay and Western Railroad Company and its wholly owned subsidiary, the Ahnapee & Western Railway Company.

DATES: The exemption is effective on December 30, 1992. Petitions for stay must be filed by December 20, 1992 and petitions for reconsideration must be filed by December 24, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32035 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: Robert H. Wheeler, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

and

Janet H. Gilbert, 6250 North River Road, Suite 9000, P.O. Box 5062, Rosemont, IL 60017–5062.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services (202) 927–5721.]

Decided: December 4, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips. Vice Chairman McDonald and Commissioner Phillips commented with separate expressions. Chairman Philbin dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30280 Filed 12–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32202]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to extend for an additional 180 days, its previous grants of 4.7 miles of overhead trackage rights to Peninsula Cooridor Joint Powers Board (JPB) between Santa Clara Junction (milepost 44.0), and Tamien, CA (milepost 48.70).[1] The extension was to become effective on or after December 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market St., suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 8, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30278 Filed 12–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32200]

Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to grant trackage rights to Southern Pacific Transportation Company (SP) over 4.7 miles of JPB's lines, between Santa Clara Junction (milepost 44.0) and Tamien (milepost 48.70), CA. The trackage rights are to be on an interim basis (for a period of 180 days) and were to become effective on or after December 1, 1992.

This grant of trackage rights is one of a series of transactions[1] that will facilitate freight, intercity passenger, and commuter service between Santa Clara Junction and Tamien, CA, during the transfer of commuter operations from SP to Amtrak. This notice is related to a notice filed in Finance Docket No. 32202, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company, in which SP is granting JPB trackage rights over SP lines, on an interim basis for a period of 180 days.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employee affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast RY., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: December 8, 1992.

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[1] SPT and JPB own parallel lines between these points. They recently agreed to grant limited, 90-day term trackage rights to each other while they studied the feasibility of entering into a coordinated use agreement to achieve more efficient freight, intercity passenger, and commuter train operations. *See* Finance Docket No. 32094, Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co. (not printed), served July 13, 1992, and Finance Docket No. 32091, Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Penin. Corr. Jt. Powers Bd. (not printed), served July 13, 1992. The term was subsequently extended for an additional 60-day period in Finance Docket No. 32159, Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co. (not printed), served October 8, 1992, and Finance Docket No. 32161, Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Penin. Corr. Jt. Powers Bd. (not printed), served October 7, 1992. This further extension is necessary because the parties have been unable to complete their negotiations. JPB has agreed to grant SPT a similar trackage rights extension in Finance Docket No. 32200.

[1] Verified notices have been filed and approved in Finance Docket No. 31980, Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company (not printed), served January 17, 1992, to exempt JPB's and Samtrans' acquisition of certain SP main lines; in Finance Docket No. 31983, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District (not printed), served January 17, 1992, to exempt JPB's and Samtrans' grant back to SP of trackage rights over certain main line that they are acquiring from SP; in Finance Docket No. 31985, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company (not printed), served January 17, 1992, to exempt SP's related grants of certain trackage rights to JPB; in Finance Docket No. 32091, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board (not printed), served July 13, 1992, to exempt JPB's related grants of certain trackage rights to SP on an interim basis for a period of 90 days; and in Finance Docket No. 32094, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company (not printed), served July 13, 1992, to exempt SP's related grants of certain trackage rights to JPB, also on an interim basis for a period of 90 days.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30279 Filed 12–11–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; the SQL Access Group, Inc.

Notice is hereby given that, on July 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the SQL Access Group, Inc. ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and its general areas of planned activity, are as follows: The SQL Access Group, Inc., Manchester, NH; and X/Open Company Limited, Reading, United Kingdom, are current parties to the venture. Current members of the SQL Access Group are: Apple Computer, Cupertino, CA; Boeing Computer Services, Seattle, WA; Borland International, Scotts Valley, CA; British Telecom Research, Ipswich, Suffolk, United Kingdom; Bull HN Information Systems, Inc., Phoenix, AZ; Cincom Systems, Cincinnati, OH; Cognos Incorporated, Ottawa, Ontario, Canada; Computer Associates Int'l, Garden City, NY; Computer Corporation of America, Cambridge, MA; Digital Equipment Corp., Nashua, NH; E.I. DuPont de Nemours & Co., Inc., Newark, DE; Fujitsu America, Inc., San Jose, CA; Fulcrum Technologies, Inc., Ottawa, Canada; GUPTA Technologies, Menlo Park, CA; Hewlett Packard, Cupertino, CA; Information Builders, Inc., New York, NY; Informix Software, Inc., Menlo Park, CA; Ingress, Alameda, CA; Lotus Development Corp., Cambridge, MA; Metaphor, Mountain View, CA; Micro Decisionware, Boulder, CO; Microsoft Corporation, Redmond, WA; Mimer Software AB, Upsala, Sweden; Must Software International, Norwalk, CT; NCR/Teradata, El Segundo, CA; Novell, Austin, TX; Oracle Corporation, Redwood Shores, CA; Progress, Bedford, MA; Retix, Santa Monica, CA; Revelation Technologies, Stanford, CT; Siemens Nixdorf Information Systems, Inc., Santa Clara, CA and Muenchen, Germany; Software AG, Reston, VA and Darmstadt, Germany; Sybase, Emeryville, CA; Tandem Computers, Inc., Cupertino, CA; Unify Corporation, Sacramento, CA; Unisys, San Jose, CA; and VMark Software, Framingham, MA.

The objective of the venture is to facilitate cooperation between X/Open and the Group in accordance with procedures established by this agreement with a view to generating jointly, and publishing (either jointly or separately) computer software specifications that may be incorporated in database and applications programs to permit applications to access information stored in databases, regardless of the computer system on which the application or the database is running.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30243 Filed 12–11–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,722]

Ozark Cutting Hermann, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Ozark Cutting, Hermann, Missouri. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,722; Ozark Cutting Hermann, Missouri (November 25, 1992)

Signed at Washington, DC, this 4th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–30164 Filed 12–11–92; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminarily a revised annual fee rate of .75% for calendar year 1992. This rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch, National Indian Gaming Commission, 1850 M Street, NW., suite 250, Washington, DC 20036; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating class II gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The Commission is unable (at this time) to adopt a final fee rate for calendar year 1992 because all class II gaming operations regulated by the Commission have not reported their assessable gross revenues and paid their fees for the first three quarters of 1992.

The regulations of the Commission and the rate being adopted today are effective for calendar year 1992. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission before the end of calendar year 1992 (December 31).

Dated: December 9, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

[FR Doc. 92–30316 Filed 12–11–92; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

Studies of Plant Components Using Yankee-Rowe Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staffs of the Yankee Atomic Power Station, Nuclear Management and Resources Council (NUMARC) and other members of the nuclear industry to discuss the possible use of the Yankee-Rowe Nuclear Power Station for studies of generic plant systems, structures and components to improve our knowledge of aging and degradation.

DATE: Tuesday, January 12, 1993.

TIME: 9 a.m.–6 p.m..

ADDRESS: 11555 Rockville Pike, Room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington DC 20555. Telephone: (301) 492–3835.

SUPPLEMENTARY INFORMATION: This meeting was originally scheduled for November 5, 1992, but was postponed due to conflicting meetings.

Aging degradation of the systems, structures and components (SSC) of nuclear power plants has been an issue of increased concern to operators and regulators of nuclear power plants in the recent years. The USA and virtually all other countries have initiated programs to monitor, detect, and mitigate the effects of aging degradation, so as to improve current plant operations and enhance plant safety. An exceptionally valuable resource for such studies is a shut-down nuclear plant; therefore, on July 9, 1992, NRC wrote to Yankee Atomic Electric Co. as well as NUMARC, EPRI and DOE, proposing that NRC hold a meeting to discuss the possible use of the shut-down Yankee Rowe Nuclear Power Station as a source of SSC for aging degradation studies; the meeting described in this notice is a result of that invitation. The meeting is expected to include a statement by the Yankee Atomic Electric Co. of its interest in this program, and the availability of its SSC for study. NRC and other participants are expected to make statements about their plans for aging studies, and of their interest in incorporating the Yankee Rowe SSC into their plans. Other persons wishing to make statements at the meeting should inform the NRC contact person by January 5, 1993. It is expected that common interests can be identified for future action by the parties concerned.

Dated at Rockville, Maryland, this 7th day of December, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92–30263 Filed 12–11–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Director's Advisory Committee on Law Enforcement and Protective Occupations; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the tenth meeting of the Director's Advisory Committee on Law Enforcement and Protective Occupations will be held at the time and place shown below:

DATE: December 16, 1992, 1:30 p.m.

PLACE: U.S. Office of Personnel Management, room 5A06A, 1900 E Street, NW., Washington, DC.

Less than 15 days notice is being given for this meeting because of a short deadline for completion of OPM's study of pay and job evaluation issues for Federal firefighters. OPM has made a commitment to complete this study at about the same time as the study of pay and job evaluation for Federal law enforcement officers. That study has a statutory deadline of January 1, 1993.

AGENDA: The focus of the December 16th meeting will be to solicit views on the Office of Personnel Management's staff proposals for Federal firefighter pay reform.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, Director, Law Enforcement and Protective Occupations Task Force, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Committee orally at the meeting should submit a written request no later than the close of business on December 14, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–30322 Filed 12–11–92; 8:45 am]

BILLING CODE 6325–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Extension of Approval of Collection of Information in Single-Employer Plan Terminations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested an extension of approval by the Office of Management and Budget ("OMB") of a collection of information from plan administrators of single-employer pension plans terminating under section 4041 of the Employee Retirement Income Security Act of 1974 ("ERISA"). This information collection is contained in the PBGC's termination regulations (29 CFR parts 2616 and 2617) and the implementing forms and instructions. The PBGC has requested expedited review by OMB pursuant to 5 CFR 1320.18(g) and, therefore, is publishing the revised termination forms and instructions with this notice.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0036), Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel, Code 22000, 2020 K Street, NW., Washington, DC 20006. The request for extension will be available for public inspection at the PBGC Communication and Public Affairs Department, suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22000, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 ("PRA") (44 U.S.C. chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget ("OMB") with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), which amended the Employee Retirement Income Security Act of 1974 ("ERISA"), imposed new rules for, and restrictions on, the voluntary termination of single-employer pension plans. Under SEPPAA, pension plans covered by ERISA's title IV insurance program may voluntarily terminate only in a standard or a distress termination, and then only if the statutory prerequisites are satisfied. SEPPAA also mandated the submission to the Pension Benefit Guaranty Corporation ("PBGC") of information necessary for it to determine whether the requirements for a standard or a distress termination have been met. ERISA's rules for voluntary terminations were further modified by the Pension Protection Act ("PPA") (a part of the Omnibus Budget Reconciliation Act of 1987) and clarified in the Omnibus Budget Reconciliation Act of 1989.

When the SEPPAA changes were enacted, the PBGC published a Notice of Interim Procedures (51 FR 12491, April 10, 1986). That notice summarized SEPPAA's requirements relating to terminations of single-employer pension plans and described the specific steps to be followed to terminate a pension plan under SEPPAA, including temporary changes to be made to the then-current termination forms. The PBGC also published proposed regulations to reflect and interpret the new statutory termination rules (52 FR 33318, September 2, 1987, to be codified as 29 CFR parts 2616 and 2617, replacing the previously promulgated 29 CFR parts 2616 and 2617). When PPA was enacted, the PBGC published a Notice of Revised Termination Rules summarizing the PPA statutory changes in the termination requirements and describing additional temporary changes to be made to the termination forms (53 FR 1904, January 22, 1988).

On December 22, 1989, the PBGC issued new forms that incorporated the statutory rules and procedures in SEPPAA and PPA, *i.e.*, Form 500 (Standard Termination Notice, including Schedule EA–S, the enrolled actuary certification of sufficiency); Form 501 (Post-Distribution Certification for Standard Terminations); Form 600 (Distress Termination Notice of Intent to Terminate); and Form 601 (Distress Termination Notice, including Schedule EA–D, the enrolled actuary certification) (see 54 FR 52904). These forms replaced the termination forms then in use and have been approved by OMB under PRA. In February 1990, to augment Form 500, the PBGC requested OMB approval of two unnumbered forms for submitting information to the PBGC when benefits are, or may be, distributed through the purchase of irrevocable commitments from an insurer, in order that it might receive such information earlier in the termination process (55 FR 6138, February 21, 1990). Finally, in May 1992, the PBGC issued a rule requiring that information about the insurer(s) be submitted with the Form 500 or as a supplement thereto (29 CFR part 2617, subpart E, 57 FR 22167, May 27, 1992). Both modifications to the information collection were approved by OMB.

With the promulgation of its final termination regulations (appearing elsewhere in today's **Federal Register**) the PBGC has revised the existing forms and drafted several new forms (including instructions thereto) to be used in fulfilling the requirements under the statute and PBGC's regulations that specified information be filed with the PBGC. The final termination regulations will apply, and the revised terminations forms would be required to be used, for single-employer plan terminations for which a notice of intent to terminate is issued on or after January 28, 1993.

The final regulations generally provide for submission of required information in accordance with the termination forms and instructions (see, *e.g.*, 2616.22(a)(4); 2616.24(a); 2616.24(b)(1); 2616.29(b); 2617.25(a); 2617.28(h)). The regulations also provide for submission of certain information in specified circumstances or at the request of the PBGC (see, *e.g.*, 2616.23(d); 2616.24(c); 2617.25(b); 2617.26(d)). Finally, the regulations contain recordkeeping requirements (2616.9, 2617.10) that track those in the existing termination regulation (2617.23) and in section 107 of ERISA.

The revised termination forms and instructions parallel the forms currently in use. (Most of the specific information called for both by the current forms and instructions and by the revised forms and instructions was included in the proposed version of the termination regulations.) However, the PBGC has added three new forms: (1) Form Rep–S (Designation of Representative—Standard Terminations); (2) Form Rep–D (Designation of Representative—Distress Terminations); and 3) Form 602 (Post-Distribution Certification—Distress Termination). The PBGC developed the designation of representative forms in response to numerous requests from members of the public that it do so. (Also in response to such requests, the PBGC has decided not to require that the forms be notarized.) The post-distribution form, which parallels current Form 501, will apply only where a plan undergoing a distress termination is sufficient for at least all guaranteed benefits, and is able to close out in the private sector; while such cases will likely be rare, Form 602 should simplify the plan administrator's task in providing needed information to the PBGC.

As noted above, the new and revised forms would be required to be used for plan terminations for which a notice of intent to terminate was issued on or after January 28, 1993. The PBGC expects that the forms and instructions, as approved by OMB, will be published in the pension reporting services and be available for mass distribution by the PBGC in adequate time to be used by plan administrators who issue the notice of intent to terminate in a standard termination on or after that date; under the final regulation (§§ 2617.22 and 2617.25), the Form 500 is not due until approximately 6 to 7 months after issuance of the notice of intent to terminate. (The PBGC hopes also to have the forms available in time for use in distress terminations, where the Form 600 would have to be filed with the PBGC within the same time limits as the notice of intent to terminate issued to other parties (2616.22); plan administrators who may be initiating distress terminations on or shortly after the above effective date should contact the PBGC for copies of Form 600.)

The PBGC also notes that there will be an overlapping period of time in which both the old and new sets of forms and instructions will be in use. Plan administrators of plans undergoing terminations in progress, *i.e.*, terminations in which the notice of intent to terminate is issued prior to the above effective date, may continue to use the current forms and instructions. (The PBGC is requesting that OMB approve the current regulations and the implementing forms and instructions, without change, for use by plan administrators of terminations in progress.) Alternatively, they may use the revised forms and instructions; if they do so, they must submit completed

forms in accordance with the instructions. Plan administrators of plans undergoing terminations in which the notice of intent to terminate is issued on or after the above effective date must use the revised forms and instructions.

Because the new and revised forms and their instructions have been drafted to implement the information collection in the final termination regulations that will become effective January 28, 1993, and because their use will greatly simplify the termination process, the PBGC has requested expedited review by OMB, pursuant to 5 CFR 1320.18(g), of the information collection requirements in the final termination regulations and the implementing forms and instructions. As part of the expedited review process, the PBGC is publishing the implementing forms and instructions as an attachment to this notice.

The PBGC anticipates receiving 8,500 standard terminations and 30 distress terminations annually. Public reporting burden for this collection of information is estimated to vary from 1.5 to 288.5 hours per response, with an average of 1.888 hours per response, including the time for reviewing instructions, collecting the information from existing data sources, completing the forms, and submitting the supplemental insurer notice. Additional information to be submitted apart from the forms and instructions is included in the above average estimate.

Issued in Washington, DC, this 7th day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

BILLING CODE 7708-01-M

STANDARD TERMINATION FILING INSTRUCTIONS

DRAFT

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs this information in order to determine whether to issue a notice of noncompliance under section 4041(b)(2)(C) of ERISA nullifying a proposed standard termination. You are required to provide this information pursuant to section 4041(b) of ERISA and 29 CFR Part 2617. The information provided to the PBGC may be subject to disclosure under the Freedom of Information Act and the Privacy Act, as applicable.

The estimated time needed to complete and file these standard termination forms is 1.5 hours per termination. This time is an estimated average time and will vary depending on the circumstances of a given plan.

If you have comments concerning the accuracy of this time estimate or suggestions for making the forms simpler, please send your comments to Pension Benefit Guaranty Corporation, Office of the General Counsel, (Code 22000), 2020 K Street, NW, Washington, DC 20006-1860 and Office of Management and Budget, Paperwork Reduction Project (1212-0036), Washington, DC 20503.

I. INTRODUCTION

The plan administrator of a single-employer pension plan that (1) is covered by the PBGC insurance program pursuant to section 4021 of ERISA and (2) has sufficient assets to satisfy all benefit liabilities must file Form 500 and Form 501 with the PBGC in order to terminate the plan in a standard termination in accordance with the requirements of section 4041 of ERISA and 29 CFR Part 2617. This package contains copies of these forms and detailed instructions for completing and filing them.

Form 500 is the Standard Termination Notice that must be filed with the PBGC pursuant to section 4041(b)(2) of ERISA and 29 CFR § 2617.25 in order to advise the PBGC of a proposed standard termination and to provide various plan data. Form 500 includes Schedule EA-S and Schedule REP-S.

Schedule EA-S is the Standard Termination Certification of Sufficiency that must be used by the enrolled actuary or, in certain situations, the plan administrator to certify that a single-employer plan terminating in a standard termination is projected to have sufficient assets to provide all benefit liabilities.

Schedule REP-S is the Designation of Representative form that may be used by a plan administrator to designate a representative or representatives to act on his or her behalf before the PBGC on some or all matters relating to the termination of a specified pension plan. Schedule REP-S also may be used to revoke a prior designation.

Form 501 is the Post-Distribution Certification that must be filed with the PBGC pursuant to section 4041(b)(3)(B) of ERISA and 29 CFR § 2617.28(h) to certify that the distribution of plan assets pursuant to the standard termination was completed in accordance with section 4041(b) of ERISA and 29 CFR § 2617.28(a) and (c).

Note: *A covered single-employer plan that does not have sufficient assets to satisfy all benefit liabilities can terminate voluntarily only if the contributing sponsor(s) and each member of the contributing sponsor's controlled group satisfy the requirements for a distress termination pursuant to section 4041(c) of ERISA and 29 CFR Part 2616. You must file Form 600 and Form 601 with Schedule EA-D with the PBGC in order to terminate in a distress termination.*

If, after beginning a standard termination proceeding, you determine that the plan is insufficient for benefit liabilities, you should stop the termination process and notify the PBGC. (In very limited circumstances, the PBGC may, upon request, permit a conversion of a standard termination to a distress termination.)

The rules and procedures for terminating a single-employer pension plan in a standard termination are set forth in section 4041(a) and (b) of ERISA and 29 CFR Part 2617. The plan administrator must follow specific steps in order to have a valid standard termination. These steps include (1) issuing the notice of intent to terminate to each person who is (as of the proposed termination date) an affected party at least 60 days and not more than 90 days before the proposed termination date; (2) issuing notices of plan benefits to plan participants and beneficiaries no later than the date the Form 500 is filed with the PBGC; (3) filing a complete and accurate Form 500 with the PBGC on or before the 120th day after the proposed termination date; and (4) distributing assets to satisfy all plan obligations for benefit liabilities within a 180-day period after PBGC's 60-day period for reviewing Form 500 ends (these time periods may be extended in accordance with 29 CFR §§ 2617.26(a)(2) and 2617.28).

It is important that you follow these rules and procedures, as set forth in ERISA, PBGC's regulations, and these instructions, because failure to do so will nullify the proposed termination. In that case, if you still intend to terminate the plan, you will have to start the process again, beginning with issuance of a new notice of intent to terminate establishing a new termination date for the plan.

Note: *Whenever the PBGC has reason to believe that any of these termination requirements have not been met, or in any proposed termination that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require that additional information be submitted at such time as the PBGC requests in writing.*

Finally, by no later than the 30th day after distribution is completed, you must, in accordance with these instructions, provide notice of the annuity contract to each participant and beneficiary receiving his or her benefit through the purchase of an annuity contract and file Form 501 with the PBGC.

II. DEFINITIONS

As used in these instructions –

"Affected party" means, with respect to a terminating plan, (a) each participant; (b) each beneficiary of a deceased participant; (c) each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA; (d) each employee organization that currently represents any group of participants; and (e) for any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate. In connection with any notice required under 29 CFR Part 2617, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated person.

"Benefit liabilities" means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

"Code" means the Internal Revenue Code of 1986, as amended.

"Contributing sponsor" means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of ERISA and section 412 of the Code.

"Controlled group" means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR Part 2612.

"Date of distribution" means (a) for benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefit passes from the plan to the insurer; and (b) for benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*).

"Guidelines" means the Joint Implementation Guidelines issued by the PBGC, the Department of the Treasury, and the Department of Labor on May 24, 1984, for processing defined benefit pension plan terminations involving asset reversions to the contributing sponsor.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

"Majority owner" means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly, or indirectly, 50 percent or more of (a) an unincorporated trade or business, (b) the capital interest or the profits interest of a partnership, or (c) either the voting stock of a corporation or the value of all the stock of a corporation. For this purpose, the constructive ownership rules of sections 414(b) and (c) of the Code shall apply.

"Mandatory employee contributions" means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Notice of intent to terminate" means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of ERISA and 29 CFR § 2617.22.

"Notice of noncompliance" means a notice issued to a plan administrator by the PBGC within a 60-day (or extended) period after a complete standard termination notice has been filed, advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan. The 60-day review period begins on the day following the filing of a complete standard termination notice and includes the 60th day.

"Notice of plan benefits" means the notice to each participant and beneficiary required by section 4041(b)(2)(B) of ERISA and 29 CFR §§ 2617.23 and 2617.24, describing his or her plan benefits.

"Participant" means–

(a) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(b) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(c) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan benefits" means the benefits to which a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's accrued benefit under the plan as of that date. Each participant's "plan benefits" equals that participant's "benefit liabilities," and the sum of all "plan benefits" equals the plan's "benefit liabilities."

"Proposed distribution date" means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the day on which the plan administrator files the Form 500 with the PBGC.

"Proposed termination date" means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice. If a plan terminates in a standard termination, this date becomes the "termination date." A proposed termination date may not be earlier than the 60th day, nor later than the 90th day, after the date of issuance of the notice of

intent to terminate. If the notice of intent to terminate is issued on two or more dates, the proposed termination date must be between 60 and 90 days after each date of issuance.

"Residual assets" means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

"Section 412(i) plan" means a plan described in section 412(i) of the Code and the regulations thereunder.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA).

"Standard termination" means the voluntary termination, in accordance with section 4041(b) of ERISA and 29 CFR Part 2617, of a single-employer plan that is able to provide for all its benefit liabilities when plan assets are distributed.

"Standard termination notice" means the notice filed with the PBGC pursuant to section 4041(b) of ERISA and 29 CFR § 2617.25, advising the PBGC of a proposed standard termination. PBGC Form 500 (including Schedule EA-S and, where required, schedule REP-S) is the standard termination notice.

III. GENERAL INSTRUCTIONS FOR FORM 500 and FORM 501

The PBGC will return incomplete filings. Therefore, the filer should assure that an appropriate response is provided for each item, as follows:

1. If an item requests a numeric response, a number must be entered.

2. If an item provides a box or boxes to be checked, written responses are not acceptable.

3. No additions or deletions may be made to the certifications required to be signed by the plan administrator or enrolled actuary.

If an item requests a date, you should enter two digits in each box, *e.g.*, enter "07" for July.

Who Must File

The plan administrator or the plan administrator's authorized representative must submit all filings required to be made with the PBGC. Schedule REP-S (PBGC Form 500) must accompany the filing if it is made by a representative of the plan administrator.

Note: *While an authorized representative may submit the filing and sign any cover letter, the plan administrator must sign the Form 500, Schedule REP-S (where required), and Form 501 in all cases. If the designated plan administrator is a board (or similar group) composed of employer and employee representatives, then at least one employer representative and one employee representative must sign the forms. If the designated plan administrator is other than an individual or a board, the forms must be signed by an officer of the designated plan administrator who has the authority to sign on behalf of that entity. Schedule EA-S must be signed by an enrolled actuary unless the plan is a section 412(i) plan. In that case, the Schedule EA-S must be signed either by the enrolled actuary or by the plan administrator.*

The PBGC will accept reproductions or other facsimiles of the forms. However, all signature pages require an original signature.

What and When to File

Form 500 with Schedule EA-S and Form 501 must be filed with the PBGC for all standard terminations.

Form 500 with Schedule EA-S and any required supplemental information must be filed simultaneously no later than 120 days after the proposed termination date.

Form 501 must be filed no later than 30 days after completion of the distribution of plan assets pursuant to the termination. The distribution of plan assets must generally be completed within 180 days after the expiration of the PBGC's 60-day (or extended) review period for determining whether to issue a notice of noncompliance. (See Section VII of these instructions for the requirements for the distribution of plan assets and for extension of the distribution deadline.)

The filing date for a document is the date on which the PBGC receives it, provided it is received no later than 4 p.m. on a weekday, other than a Federal holiday. Documents received after 4 p.m. or on weekends or Federal holidays will be deemed filed on the next regular business day.

In computing time periods, begin counting on the day after the event occurs. If the last day of the period falls on a Saturday, Sunday, or Federal holiday, then the period runs until the next regular business day.

Note: *The proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday, and is not deemed otherwise by the computation rule discussed above. For example, a notice of intent to terminate issued September 2, 1992, specifies a proposed termination date of October 31, 1992. The notice of intent to terminate was issued only 59 days, rather than the required 60 days, before the proposed termination date. The fact that October 31st falls on Saturday does not cause the time period for this purpose to run until the following Monday.*

Where to File

Any document being filed for a standard termination may be delivered by mail or by hand to:

Pension Benefit Guaranty Corporation
Case Operations and Compliance Department
Room 5500 (Code 45200)
2020 K Street, NW
Washington, DC 20006-1860

For Questions, Problems, Copies of Forms

Plan administrators who are unsure whether their plans are covered by PBGC or who have other questions or problems may contact:

Pension Benefit Guaranty Corporation
Administrative Review and Technical
Assistance Division (Code 45400)
2020 K Street, NW
Washington, DC 20006-1860
Telephone: (202) 778-8800

Hearing impaired persons may telephone (202) 778-1958.

These phone numbers, and all other phone numbers in these instructions, are not toll-free numbers, and the PBGC cannot accept collect calls.

To request copies of the forms, contact the Pension Benefit Guaranty Corporation's Case Operations and Compliance Department (Code 45200) at the same address shown above or by telephoning (202) 778-8800.

IV. SPECIFIC INSTRUCTIONS - FORM 500

Part I. Identifying Information

1a Enter the complete name of the plan as it appears on the plan document.

2a Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.

2b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.

2c If the EIN/PN entered in item 2b is different from that used in earlier filings with the PBGC (including premium and reportable event filings for this plan), enter the EIN/PN previously reported.

2d Enter the same 4-digit industry code that you entered on your most recent PBGC Form 1 (premium) filing.

3a Enter the name, address, and telephone number of the individual, board, or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated or if the contributing sponsor is so designated, enter "same".

Part II. General Plan Information

4a If you are filing for an Internal Revenue Service determination letter, you should submit that request no later than the date on which you file the Form 500 with the PBGC. The automatic extension of the deadline for the distribution of assets (described in Section VII of these instructions) is only available to a plan that files with the IRS on or before the date the Form 500 is filed with the PBGC.

5a For this purpose, "multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer.

7 Check whichever statement(s) best describes any change in the organization or structure of the contributing sponsor that is associated with, or resulted in, the decision to terminate the plan.

8a For this purpose, "active participants" includes both currently employed participants and separated, nonvested participants who are earning or retaining credited service under the plan.

9 Any currently employed participant who you expect will be covered under more than one type of new or existing plan should be included in each item that applies.

11a The proposed termination date entered in item 11a may be later than the proposed termination date specified in the notice of intent to terminate, but it may not be later than the 90th day after the issuance of the notice of intent to terminate is begun, *i.e.*, the earliest date a notice of intent to terminate is issued to any affected party.

EXAMPLE - *The plan administrator begins issuing the notice of intent to terminate on September 29, 1992, and completes the issuance to all affected parties on October 1, 1992, specifying a proposed termination date 63 days later, December 3, 1992. In item 11a, the plan administrator may specify a proposed termination date of any day from December 3, 1992, to and including December 28, 1992.*

12a Enter the earliest date any notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party.

12b Enter the latest date any notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party.

The "latest" date of issuance of any notice of intent to terminate is the date when the last copy is issued to any affected party reasonably known or discovered during the 60-90 day period before the proposed termination date. It is your responsibility to use your best efforts to locate all affected parties by taking all necessary and appropriate steps under the circumstances. (The discovery of additional affected parties after the above 60-90 day period will not cause the notice to be untimely if you could not reasonably have been expected to know of the additional affected parties and if you promptly issue the notice of intent to terminate to each additional affected party.)

13 Enter the latest date on which any notice of plan benefits was handed to, or deposited with a mail or courier service directed to, any affected party (other than any employee organization). This date can be no later than the date on which the plan administrator files the Form 500 with the PBGC.

The "latest" date of issuance of any notice of plan benefits is the date when the last notice is issued to each person reasonably identified as being entitled to a notice of plan benefits on or before the date of filing of Form 500. It is your responsibility to use your best efforts to locate all persons entitled to a notice of plan benefits by taking all necessary and appropriate steps under the circumstances. (The discovery of additional persons entitled to a notice of plan benefits after the Form 500 is filed with the PBGC will not cause such notices to be untimely if you could not reasonably have been expected to know of the additional persons and if you promptly issue a notice of plan benefits to each additional person entitled to receive one.)

14a If the PBGC is advised, before the 60-day (or extended) period in 29 CFR § 2617.26 ends, that a formal challenge to the plan termination has been initiated, the PBGC will suspend the termination proceeding and will so advise the plan administrator in writing. If the PBGC is advised of a challenge to the termination after the 60-day (or extended) period ends but before the termination procedure is concluded, the PBGC may suspend the termination proceedings and, if it does, will so advise the plan administrator in writing. For this purpose, the following definitions apply:

(1) "Formal challenge to a termination" means the occurrence of any of the following actions asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement: (A) the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement, or (B) the commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(2) "Existing collective bargaining agreement" means a collective bargaining agreement that (A) by its terms, (i) has not expired or (ii) is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and (B) has not been made inoperative by judicial ruling.

When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms continue to apply by operation of law.

14b If you checked "Yes" in item 14a, attach a copy of the formal challenge and a statement showing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.

15 PBGC premiums are due for each year up to and including the plan year in which assets are distributed pursuant to the termination.

PART III. IRREVOCABLE COMMITMENTS

16a Each participant must be offered all optional forms of benefits for which he or she is eligible under the terms of the plan. Benefit liabilities may be distributed in a form other than an annuity (*e.g.*, an immediate lump sum or rollover) only if the plan provides for such a distribution and (1) for non-retired participants, the present value of the participant's benefit (valued in accordance with the rules described under "Valuation of Other Benefits" in the instructions to item 6 of Schedule EA-S), including amounts previously distributed, is $3500 or less, or

assets attributable to those contributions must be equitably distributed to the participants who made such contributions (see section 4044(d)(3) of ERISA and 29 CFR Part 2618).

18 Under section 4044(d)(2) of ERISA, a plan provision permitting an employer to recover residual assets, or a plan amendment increasing the amount of such assets that may revert to the employer, may not be effective before the end of the fifth calendar year following the adoption of the amendment.

Exceptions: A plan provision providing for a reversion is not subject to the five-year rule described above if (1) such a provision was adopted on or before December 17, 1987, (2) a plan that had no provision relating to a reversion to the employer adopted such a provision after December 17, 1987, and before December 18, 1988, or (3) a plan that has been in effect for less than five years has contained such a provision since the effective date of the plan.

A plan amendment increasing the amount of the reversion is not subject to the five-year rule if the amendment was adopted on or before December 17, 1987.

19a Check "Yes" if, during the 36-month period immediately preceding the proposed termination date, the plan has transferred assets or liabilities to a newly-created plan or to an existing plan or had transferred to it assets or liabilities from another plan.

19b A spin-off/termination occurs when a single defined benefit plan is split into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer. If a transfer of assets or liabilities is part of a spin-off/termination, generally the termination would not be recognized and any attempt to recover residual assets would be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries, unless the requirements set forth in the Guidelines are satisfied as follows:

(1) All participants and beneficiaries in the original plan who are covered by the ongoing plan must be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated. (These notice requirements are also set forth at 29 CFR §§ 2617.22 and 2617.23.) Accordingly, you must either hand deliver or deliver by first-class mail or courier service to the last known address of each affected party (other than a collective bargaining representative): (A) a notice describing the transaction, which must be issued no later than the latest date on which the notice of intent to terminate is issued with respect to the terminating plan; and (B) notices of plan benefits, which must be issued no later than the latest date on which notices of plan benefits are issued with respect to the terminating plan;

(2) The plan benefits under the ongoing plan of participants and beneficiaries described in (1) above must be fully vested as of the termination date of the terminating plan; and

(3) All plan benefits described in (2) above must be provided for by the purchase of annuity contracts that represent irrevocable commitments for the plan benefits of each participant or beneficiary.

V. SPECIFIC INSTRUCTIONS - FORM 500, SCHEDULE EA-S

Schedule EA-S must be used to certify that a plan terminating in a standard termination is projected to have sufficient assets to provide all benefit liabilities as of the proposed distribution date, as required under section 4041(b)(2)(A) of ERISA.

The plan administrator must file the completed Schedule EA-S together with the Form 500. The Schedule EA-S must be signed by the enrolled actuary, unless the plan is a Code section 412(i) plan. For a section 412(i) plan, either the enrolled actuary or the plan administrator must sign the Schedule EA-S.

SCHEDULE EA-S

Part I. Code Section 412(i) Plan

1 Check "Yes" if this is a plan described in Code section 412(i) and enter the name and address of the insurer in item 2.

Part II. Plan Sufficiency

3 Enter the proposed distribution date. The proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the filing date of the Form 500.

EXAMPLE - *The plan administrator files a Form 500 with the PBGC on March 30, 1992. The earliest possible proposed distribution date is May 30, 1992. The latest possible proposed distribution date is November 25, 1992.*

5 Enter the estimated fair market value of the plan assets available to pay for benefits, valued as of the proposed distribution date. Plan assets available to pay for benefits include all plan assets remaining after subtracting all liabilities (other than the future benefit liabilities that will be provided when assets are distributed). Liabilities include, *e.g.*, benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs. The enrolled actuary may include as a plan asset for this purpose the value of a commitment by a contributing sponsor or controlled group member to contribute any additional sums necessary to make a plan sufficient for all benefit liabilities, in accordance with the rules in 29 CFR § 2617.7(a).

6 Enter the estimated present value of benefit liabilities as of the proposed distribution date.

SCHEDULE EA-S

Value of Annuity Contracts

The value of benefit liabilities that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such benefit liabilities (see also instructions to item 14a of Form 500).

Note: *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 500 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before item 6 is completed.*

Value of Other Benefits

To value benefit liabilities that will be provided other than through the purchase of annuity contracts, the enrolled actuary must use an interest rate or rates determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The interest rate(s) shall be determined as of the date set forth in the plan if the plan provision is in accord with the IRS rules concerning the date as of which the interest rate is determined; otherwise, the interest rate(s) shall be determined as of the date of distribution. (See 26 CFR § 1.417(e)-1(d)(3).)

Note: *If a plan contains a provision that complies with Treasury Reg. § 1.417(e)-1(d)(3), the interest rate is determined by substituting "date of distribution" for "annuity starting date" wherever used in the plan.*

Generally, the rate described in sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder is whichever of the following two rates or rate structures provides the greater benefit: (1) the rate specified in the plan or (2) the "applicable interest rate " (or, if the present value of vested accrued benefits exceeds $25,000

SCHEDULE EA-S

using the applicable interest rate, a rate no greater than 120 percent of the applicable interest rate).

Note: *When using the alternative 120 percent of the applicable interest rate, the resulting present value of the vested accrued benefits may not be less than $25,000.*

The "applicable interest rate" is the interest rate that would be used by the PBGC for purposes of determining the present value of a lump sum distribution on plan termination. Note: *The appropriate deferral factors must be used for valuing deferred annuities.*

The applicable interest rates and factors are published at 29 CFR Part 2619, Appendix B, and updated in accordance with that regulation. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC also makes interest rate information available through a telephone hotline. The hotline number is (202) 778-8899.

Note: *In order to facilitate the termination of a plan and distribution of assets in a standard termination, a majority owner may agree to an alternative treatment of his or her benefit by foregoing the receipt of all or part of the benefit until the benefit liabilities of all other plan participants have been satisfied. (In accordance with the Code and IRS regulations thereunder, if the present value of the benefit is more than $3,500, the spouse of the majority owner must consent to this alternative treatment of the benefit. See Treas. Reg. §§ 1.411(d)-4 and 1.417(e)-1.) An election to forego payment of benefits is permitted merely to facilitate a standard termination; if assets become available when final distribution occurs, such assets must be used to satisfy the benefit liabilities of the majority owner before any assets may revert to the contributing sponsor. See 29 CFR § 2617.7(b).*

SCHEDULE REP-S

7 Enter the total amount of residual assets.

8 Enter that portion of the amount in item 7 that will be distributed to the employer pursuant to section 4044(d) of ERISA.

9 Enter that portion of the amount in item 7 that will be distributed to participants. This amount includes the amount of the residual assets, if any, attributable to mandatory employee contributions. (The sum of the amounts in item 8 and item 9 must equal the amount in item 7.)

10 Check "Yes" if the plan has ever required that participants contribute to the plan.

If there are residual assets and the plan required employee contributions, the portion of the residual assets attributable to such employee contributions must be determined pursuant to section 4044(d)(3) of ERISA. For rules on allocating residual assets among participants and beneficiaries, see 29 CFR Part 2618.

11 State the interest rate or rates that will be used to value the benefits that are to be distributed other than through the purchase of annuity contracts and the source of those rates, *e.g.*, the rate specified in the plan or the PBGC rate(s) as of the appropriate date (see instructions to item 6, above). Include the deferral factors or rate structure that will be used to value the benefits for participants who are not immediately eligible for an annuity.

VI. SPECIFIC INSTRUCTIONS - FORM 500, SCHEDULE REP-S

Schedule REP-S may be used to designate a person or persons to represent you before the PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-S (or another designation of representative form) must be filed simultaneously with Form 500 and Schedule EA-S if Form 500 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-S at any time that you

wish to designate a representative or representatives in connection with a standard termination. Schedule REP-S also may be used to revoke a prior designation.

Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 500 that you filed, or are filing, with the PBGC.

Part III. Retention/Revocation of Prior Designation(s)

If you wish a previous designation for the same termination to remain in effect, check "Yes" in items 7a and 7b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect.

Part IV. Signature

You, as plan administrator, must sign the Schedule REP-S. (The PBGC will accept facsimiles of the form, but your signature must be an original).

Note: *If the plan administrator is a board (or similar group) composed of employer and employee representatives, at least one employer representative and one employee representative must sign this form. If the plan administrator is other than an individual or a board, this form must be signed by an officer of the plan administrator who has the authority to do so.*

VII. SPECIFIC INSTRUCTIONS - FORM 501

Form 501 is the form that must be used by the plan administrator to certify that the distribution of assets was completed in accordance with section 4041(b) of ERISA. You must file Form 501 with the PBGC within 30 days after the completion of the distribution of assets.

Note: *Pursuant to section 4071 of ERISA, the PBGC may impose a civil penalty of up to $1,000 per day for each day for which the Form 501 is overdue. This penalty may be imposed beginning on the 31st day after the distribution is completed.*

You must complete the distribution of plan assets within 180 days after the expiration of the PBGC's review period for determining whether to issue a notice of noncompliance. This 180-day period may be extended according to the following rules:

Automatic extension

The distribution deadline will automatically be extended until the 60th day after the plan's receipt of a favorable IRS determination letter, if --

(1) on or before the date that the plan administrator files the Standard Termination Notice (Form 500) with the PBGC, the plan administrator submitted to the IRS a complete request for a determination letter with respect to the plan's tax-qualification status upon termination;

(2) the plan administrator does not receive the IRS's determination letter at least 60 days before the expiration of the 180-day period for distribution; and

(3) on or before the expiration of the 180-day period, the plan administrator notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in (1) and (2) have been met.

Discretionary extension

If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period, the plan administrator may file a written request with the PBGC for an extension of the distribution deadline. The PBGC will not grant any request based on: (1) insufficient plan assets to provide all benefit liabilities within the 180-day (or extended) period; (2) failure to meet the requirements for an automatic extension; or (3) failure to locate all participants and beneficiaries.

The PBGC will grant a discretionary extension only if the PBGC is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and distribution can in fact be completed by the date requested.

The request must be filed no later than 30 days before the expiration of the 180-day (or extended) period, must explain the reason for the request, and must provide a date certain by which the distribution will be made if the extension is granted. All requests for extensions must be in writing addressed to:

Manager, Standard Processing Division
Pension Benefit Guaranty Corporation
Room 5500 (Code 45300)
2020 K Street, NW
Washington, DC 20006-1860

Part I. Distribution Information

3 Enter the PBGC Case Number. You will find this number on the letter that the PBGC sent to you acknowledging receipt of the Form 500 for this plan.

4 Enter the date on which the distribution of assets was completed.

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing the benefit liabilities passes irrevocably from the plan to the insurer.

A distribution of assets in a manner other than by the purchase of an annuity contract occurs on the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

6 If you have been unable to locate certain participants after having made a reasonable effort to do so, you must (except as described below) purchase irrevocable commitments to provide benefits for each participant who has not been located. In the alternative, if the benefit of any unlocatable participant is valued at $3,500 or less and would otherwise be distributed in a lump sum, you may deposit the monies that would otherwise be distributed into an interest-bearing bank account opened in the participant's name at a federally insured institution. In the limited case where you have made every reasonable effort to locate missing participants and to locate institutions that are willing to open individual interest-bearing accounts, but are still unable to complete the distribution in this manner, then the use of a pooled interest-bearing account may be appropriate.

If such an account (individual or pooled) is opened, it must be maintained by a fiduciary whom you have designated and who continues to have ongoing fiduciary obligations to those missing plan participants. The fiduciary must keep clear, up-to-date records of each participant's opening balance and earnings throughout the life of the account and must be available to make every reasonable effort to assist those participants who do come forward to claim their benefits.

7a As soon as practicable after a distribution by the purchase of an irrevocable commitment, either you or the insurer must provide each participant and beneficiary with a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit. If such a contract or certificate is not available before the deadline for filing Form 501, you must, no later than that deadline, provide each participant and beneficiary with a written notice stating:

(1) that the obligation for providing the benefit has transferred to the insurer;

(2) the name and address of the insurer;

(3) the name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

FORM 501

(4) that the participant or beneficiary will receive from the plan administrator or the insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

8 Enter the name and address of the insurer(s), if any, that made an irrevocable commitment to provide benefit liabilities under the plan. The name must be the full official name of record.

9 Enter the name, address, and telephone number of the person keeping the plan records. The contributing sponsor or plan administrator must keep records supporting the calculation and valuation of benefits and assets for at least six years after the date the post-distribution certification is filed.

10 In reporting values, use the actual cost to the plan of the distribution (the amount of any lump sum distribution; the price paid for a nonparticipating annuity contract).

PBGC Form 500

PBGC
U.S. GOVERNMENT AGENCY

Standard Termination Notice
Single-Employer Plan Termination

Approved OMB 1212-0036
Expires 00/00/00

File this form with the Pension Benefit Guaranty Corporation for a standard termination for which a notice of intent to terminate is issued on or after _____.

Do NOT file this form with the Internal Revenue Service.

DRAFT

PART I. IDENTIFYING INFORMATION

1a Plan name _____

b Last day of plan year ☐☐
Month Day

2a Contributing sponsor

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

b Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

c If you used a different EIN or PN for this contributing sponsor/plan in previous filings with the PBGC, also show the number(s) previously reported ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

d Industry code ☐☐☐☐

3a Plan administrator (If same as 2a, enter "same".)

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

3b Name, address, and telephone number of person to be contacted if more information is needed. (If same as 3a, enter "same".)

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____ Area code

PART II. GENERAL PLAN INFORMATION

4a Have you filed, or will you file, with the Internal Revenue Service for a determination letter on the termination of this plan?

Yes ☐ No ☐

b If "Yes", enter the district:

_____

and filing date: ☐☐☐ Month Day Year

5a Is this a multiple employer plan?

Yes ☐ No ☐

b If "Yes", attach a list of the names and employer identification numbers of all contributing sponsors.

6 Reason for plan termination (if more than one, rank in order of significance, beginning with "1" for the most important)

a_____ Adverse business conditions
b_____ Plan administration too costly
c_____ Plan benefits too costly
d_____ Restructuring of retirement program
e_____ Other, specify_____

_____

7 Changes in contributing sponsor associated with plan termination

a ☐ No change
b ☐ Reorganization as part of bankruptcy or similar proceeding
c ☐ Merger of existing subsidiaries or divisions not involving bankruptcy
d ☐ Sale or closing of subsidiaries or divisions not involving bankruptcy
e ☐ Acquisition by another business
f ☐ Acquisition of another business
g ☐ Liquidation

8 Number of plan participants

a Active participants _____
b Retirees or beneficiaries receiving benefits _____
c Separated vested participants entitled to benefits _____
d Total _____

9 Estimated percent of currently employed participants covered under the terminated plan you expect to be covered under –

a New or existing defined benefit plan, other than cash balance plan _____%
b Cash balance plan _____%
c New or existing profit-sharing plan _____%
d New or existing 401(k) plan _____%
e New or existing simplified employee plan _____%
f Other new or existing defined contribution plan, specify _____%

_____

_____

g No new plan _____%

10 If item 9a or 9b is greater than zero, will the types and levels of benefits under the new or existing defined benefit plan be substantially the same as under the old plan for all groups of participants?

Yes ☐ No ☐

11a Proposed termination date

☐☐☐
Month Day Year

b Proposed termination date stated in notice of intent to terminate (if different from 11a)

☐☐☐
Month Day Year

12a Earliest date notice of intent to terminate issued to affected parties

☐☐☐
Month Day Year

b Latest date notice of intent to terminate issued to affected parties

☐☐☐
Month Day Year

13 Latest date notices of plan benefits issued to participants or beneficiaries

☐☐☐
Month Day Year

14a Has a formal challenge to the termination been initiated under an existing collective bargaining agreement?

Yes ☐ No ☐ N/A ☐

b If "Yes", attach a copy of the formal challenge and a statement describing the challenge.

15 Have all PBGC premiums been paid to date?

Yes ☐ No ☐

PART III. IRREVOCABLE COMMITMENTS

16a May some or all of the benefits under the plan be provided by the purchase of irrevocable commitments from an insurer or insurers?

Yes ☐ No ☐

b If "Yes", enter name and address of the insurer or insurers from whom, or (if not yet known) from among whom, you intend to purchase irrevocable commitments. **Note:** A supplemental notice may be required.

Name (full official name of record)

Address (number and street)

City or town State Zip Code Telephone number \ Area code

Is this insurer licensed in a state or the District of Columbia? Yes ☐ No ☐

Name (full official name of record)

Address (number and street)

City or town State Zip Code Telephone number \ Area code

Is this insurer licensed in a state or the District of Columbia? Yes ☐ No ☐

PART IV. RESIDUAL ASSET PLANS

17a Will residual assets be returned to the employer as a result of this termination?

Yes ☐ No ☐

If "No", do not complete the rest of Part IV; go to Part V.

b If "Yes," enter the estimated amount $ _____

18a Is there a plan provision permitting a reversion of residual assets to the employer?

Yes ☐ No ☐

b If "Yes", was the provision adopted prior to December 18, 1988?

Yes ☐ No ☐

c If you checked "No" in item 18b, enter:

i) Adoption date of plan provision

Month	Day	Year

ii) Effective date of plan

Month	Day	Year

19a Has the plan been involved in a spin-off or other transfer of assets or liabilities within the 36-month period immediately preceding the proposed termination date?

Yes ☐ No ☐

b If "Yes", have the requirements set forth in the Guidelines been satisfied?

Yes ☐ No ☐ N/A ☐

i) If "Yes", enter date, or latest date, a description of the transaction(s) was issued to participants in the ongoing plan.

Month	Day	Year

ii) If "Yes", enter date, or latest date, notices of plan benefits were issued to participants in the ongoing plan.

Month	Day	Year

iii) If "Yes", have annuities been purchased or will annuities be purchased, to provide all benefit liabilities for participants in the ongoing plan at the time of the spin-off?

Yes ☐ No ☐

c If you checked "No" or "N/A" in item 19b, attach a statement that describes the transaction(s) and explains why the Guidelines were not, or need not have been, followed.

PART V. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- I am implementing the termination of the plan in accordance with all applicable laws and regulations; and
- the information contained in this filing and made available to the enrolled actuary is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

_____

Plan administrator's name (type or print)

_____ _____

Plan administrator's signature Date

PBGC
U.S. GOVERNMENT AGENCY

Schedule EA-S
(PBGC Form 500)

Standard Termination Certification of Sufficiency

Approved OMB 1212-0036
Expires 05/31/93

DRAFT

Plan Name _____

EIN: ☐☐☐☐☐☐☐☐ PN: ☐☐☐

PART I. CODE SECTION 412(i) PLAN

1 Is this plan a Code section 412(i) plan? Yes ☐ No ☐

If "No", the enrolled actuary must complete Part II and Part III. Do not complete item 2 or Part IV.

If "Yes", item 2 below and all of Part II must be completed, and either Part III or Part IV must be completed and signed by the plan administrator or enrolled actuary, as appropriate.

2 Enter name and address of the insurer

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

PART II. PLAN SUFFICIENCY

3 Proposed distribution date

☐☐☐
Month Day Year

4 Is the value of plan assets projected to be sufficient as of the proposed distribution date to provide all benefit liabilities?

Yes ☐ No ☐

If "No", the plan cannot terminate in standard termination.

5 Estimated value of plan assets as of the proposed distribution date $_____

6 Estimated value of benefit liabilities as of the proposed distribution date $_____

7 Total amount of residual assets $_____

8 Amount of residual assets to be distributed to the employer $_____

9 Amount of residual assets to be distributed to participants and beneficiaries $_____

10 Has the plan ever required employee contributions?

Yes ☐ No ☐

11 If the amount in item 8 is $1 million or more and if any benefits are to be distributed other than through the purchase of annuity contracts, attach a statement showing interest rate/structure used to value the benefits.

PART III. ENROLLED ACTUARY CERTIFICATION

I, the Enrolled Actuary, certify that:

- I have reviewed all plan documents and plan and participant data, and applied all relevant provisions of ERISA, the Code, and the regulations promulgated thereunder;

- to the best of my knowledge and belief, this plan's assets equal or exceed the value of the plan's benefit liabilities as of the proposed distribution date; and

- to the best of my knowledge and belief, the information contained in this schedule is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Enrolled actuary's name (type or print) \ Enrolled actuary identification number

Company

Address (number and street)

City or town State Zip Code Telephone number \ Area code

Enrolled actuary's signature Date

PART IV. PLAN ADMINISTRATOR CERTIFICATION FOR CODE SECTION 412(i) PLANS

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- this plan complies with section 412(i) of the Code and the regulations promulgated thereunder;

- I have reviewed all plan documents and plan and participant data, and applied all relevant provisions of ERISA and the Code and the regulations promulgated thereunder;

- this plan's assets equal or exceed the value of the plan's benefit liabilities as of the proposed distribution date; and

- the information contained in this schedule is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Plan administrator's name (type or print)

Plan administrator's signature Date

PBGC
U.S. GOVERNMENT AGENCY

Schedule REP-S
(PBGC Form 500)

Designation of Representative

Approved OMB 1212-0036
Expires 08/30/93

DRAFT

PART I. IDENTIFYING INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 Plan administrator

Name _____

Company _____

Address (number and street) _____

City or town State Zip Code Telephone number ( ) _____
Area code

PART II. DESIGNATION OF REPRESENTATIVE(S)

4 I, _____, plan administrator of the above-named pension plan, hereby appoint the following representative(s) to act on my behalf before the Pension Benefit Guaranty Corporation on all matters (other than those specifically excluded below) relating to the termination of the above-named pension plan:

5 Representative(s)

a

Name _____

Company _____

Address (number and street) _____

City or town State Zip Code Telephone number ( ) _____
Area code

b

Name _____

Company _____

Address (number and street) _____

City or town State Zip Code Telephone number ( ) _____
Area code

6 Matters excluded (list any specific acts with respect to the plan termination that you are excluding from the acts otherwise authorized in this designation): _____

_____

_____

_____

PART III. RETENTION/REVOCATION OF PRIOR DESIGNATION(S)

7a Have you filed any prior designation(s) of representative for this termination?

Yes ☐ No ☐

b If "Yes", do you want any such prior designation(s) of representative to remain in effect? (Attach a copy of all prior designations that are to remain in effect.)

Yes ☐ No ☐

PART IV. SIGNATURE OF PLAN ADMINISTRATOR

Note: The PBGC will not accept unsigned designations.

In executing this document, I certify that the foregoing is true and correct, and recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Signature	Date	Title (if applicable)
Type or print name		
Signature	Date	Title (if applicable)
Type or print name		

PBGC Form 501

PBGC
U.S. GOVERNMENT AGENCY

Post-Distribution Certification for Standard Termination

Approved OMB 1212-0036
Expires 04/30/93

The plan administrator must file this form with the Pension Benefit Guaranty Corporation no later than 30 days after distribution of assets is completed.

DRAFT

PART I. DISTRIBUTION INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 PBGC Case number _____

4 Date of distribution ☐☐☐
Month Day Year

5a Were some or all of the benefits distributed through the purchase of irrevocable commitments from an insurer?

Yes ☐ No ☐

b If "Yes", were participants and beneficiaries provided with the name and address of the insurer(s) no later than 45 days before the date of distribution?

Yes ☐ No ☐

6a Were you able to locate all participants?

Yes ☐ No ☐

b If "No", were irrevocable commitments purchased or monies deposited, as required?

Yes ☐ No ☐

7a Has a copy of the annuity contract, certificate, or written notice been provided to each participant and beneficiary receiving benefits in the form of irrevocable commitments?

Yes ☐ No ☐ N/A ☐

b If "Yes", enter date, or latest date, annuity contracts, certificates, or written notices were issued to participants and beneficiaries:

☐☐☐
Month Day Year

8 Name and address of insurer(s), if any, from whom annuity contracts have been purchased

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

Annuity contract number(s) _____

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____

Annuity contract number(s) _____

9 Location of plan records

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

10 Summary of distribution of benefit liabilities

	Form	Number Of Participants/Beneficiaries	Total Value
a	Annuities		$
b	Lump sums (other than rollovers)		
	-- consensual		$
	-- nonconsensual		$
c	Rollovers		$
d	No distribution		$
e	TOTAL		$

PART II. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that

- I have made a reasonable effort to locate all participants;
- to the best of my knowledge and belief, benefits payable with respect to participants have been calculated and valued correctly in accordance with applicable provisions of ERISA and the regulations thereunder;
- to the best of my knowledge and belief, all benefit liabilities under the plan have been satisfied;
- to the best of my knowledge and belief, plan assets in excess of those needed to satisfy all benefit liabilities have been or will be distributed in accordance with applicable provisions of ERISA and the regulations thereunder;
- to the best of my knowledge and belief, the information contained in this filing is true, correct, and complete; and
- I am aware that records supporting the calculation and valuation of benefits and assets must be kept at least six years after the date this post-distribution certification is filed.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name of plan administrator (type or print)

Company

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

Plan administrator's signature Date

DISTRESS TERMINATION FILING INSTRUCTIONS

DRAFT

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs this information in order to determine whether the termination qualifies as a distress termination under section 4041(c) of ERISA and 29 CFR Part 2616. You are required to provide this information pursuant to section 4041(c) of ERISA and 29 CFR Part 2616. The information provided to the PBGC may be subject to disclosure under the Freedom of Information Act and the Privacy Act, as applicable.

The estimated times needed to complete and file these distress termination forms are listed below. These times are averages for the plans in each of the listed categories. These times will vary depending on the circumstances of a given plan.

Plans with under 100 participants-
Bankruptcy or insolvency
proceeding .....29.35 hours
Other distress criteria.....43.75 hours

Plans with 100 or more participants-
Bankruptcy or insolvency
proceeding..... 274.1 hours
Other distress criteria.....288.5 hours

If you have comments concerning the accuracy of these time estimates or suggestions for making the forms simpler, please send your comments to Pension Benefit Guaranty Corporation, Office of the General Counsel, (Code 22000), 2020 K Street, NW, Washington, DC 20006-1860 and Office of Management and Budget, Paperwork Reduction Project (1212-0036), Washington, DC 20503.

I. INTRODUCTION

The plan administrator of a single-employer pension plan that is covered by the PBGC insurance program pursuant to section 4021 of ERISA must file Form 600 and Form 601 with the PBGC in order to terminate the plan in a distress termination. (In addition, if the plan is sufficient for at least guaranteed benefits and thus closes out in the private sector, the plan administrator must file Form 602.) This package contains copies of these forms and detailed instructions for completing and filing them. The rules and procedures for terminating a single-employer plan in a distress termination are set forth in section 4041(a) and (c) of ERISA and 29 CFR Part 2616.

Form 600 is the Notice of Intent to Terminate that must be filed with the PBGC pursuant to section 4041(a)(2) of ERISA and 29 CFR § 2616.22 in order to advise the PBGC of a proposed distress termination and to provide various plan and sponsor data. Form 600 includes Schedule REP-D.

Schedule REP-D is the Designation of Representative form that may be used by a plan administrator to designate a representative or representatives to act on his or her behalf before the PBGC on some or all matters relating to the termination of a specified pension plan. Schedule REP-D also may be used to revoke a prior designation.

Form 601 is the Distress Termination Notice that must be filed with the PBGC pursuant to section 4041(c)(2)(A) of ERISA and 29 CFR § 2616.24 to provide information demonstrating satisfaction of the distress criteria and various plan, sponsor, and participant data. Form 601 includes Schedule EA-D.

Schedule EA-D is the Distress Termination Enrolled Actuary Certification that must be used by an enrolled actuary to certify the level of plan benefits that can be provided by plan assets.

Note: *A terminating plan that has sufficient assets to satisfy all benefit liabilities normally should be terminated in a standard termination, not a distress termination, even if the contributing sponsor(s) and controlled group members can meet the requirements for a distress termination, because the standard termination process is faster and less costly for the plan. You must file Form 500 with Schedule EA-S and Form 501 with the PBGC in order to terminate in a standard termination in accordance with the requirements of section 4041(b) of ERISA and 29 CFR Part 2617.*

Form 602 is the Post-Distribution Certification that must be filed with the PBGC pursuant to 29 CFR § 2616.29(b), if the plan is sufficient for at least guaranteed benefits (and thus closes out in the private sector), to certify that the distribution of plan assets pursuant to the distress termination was completed in accordance with section 4041(c) of ERISA and 29 CFR § 2616.29(a).

If, after beginning a distress termination proceeding, you find that the plan qualifies for a standard termination, you may be able to convert from a distress termination to a standard termination. In that event, please contact the PBGC Case Officer assigned to your case.

A plan may terminate in a distress termination only if the following conditions are met: (1) The plan administrator issues the notice of intent to terminate to each person who is (as of the proposed termination date) an affected party at least 60 days and no more than 90 days before the proposed termination date. (Form 600 is to be filed with the PBGC for this purpose. There is no prescribed form for the notice of intent to terminate that must be issued to the other affected parties; however, the notice must meet the requirements set forth in 29 CFR § 2616.22.) (2) The PBGC determines that the contributing sponsor(s) and each member of each contributing sponsor's controlled group satisfies at least one (but not necessarily the same one) of four statutory distress tests. (3) The plan administrator files a distress termination notice (Form 601, including a Schedule EA-D signed by an enrolled actuary) with the PBGC in a timely manner. Briefly, the four statutory distress tests are –

1. Liquidation in bankruptcy or insolvency proceedings;

2. Reorganization in bankruptcy or insolvency proceedings with court approval of the termination;

3. Inability to pay debts when due and to continue in business unless a distress termination occurs; and

4. Unreasonably burdensome pension costs due solely to a decline in employment.

It is important that you follow the rules set forth in ERISA, PBGC's regulations, and these instructions for terminating the plan, because failure to do so may nullify the proposed termination.

Note: *Whenever the PBGC has reason to believe that any of the termination requirements have not been met, or that it may be necessary or appropriate for the PBGC to institute termination or trusteeship proceedings pursuant to section 4042 or ERISA, the PBGC may require that additional information be submitted at such time as the PBGC requests in writing.*

The PBGC will trustee a plan if the plan qualifies for a distress termination and the PBGC determines, pursuant to section 4041(c)(3) of ERISA and 29 CFR § 2616.26, that the plan has insufficient assets to provide benefits guaranteed by the PBGC under section 4022(a) and (b) of ERISA.

If the PBGC determines that the plan has sufficient assets to provide at least all guaranteed benefits, the PBGC will issue a distribution notice. In that case, the plan administrator must (1) issue a notice of benefit distribution in accordance with 29 CFR §2616.27 to each participant/beneficiary no later than 60 days after receiving the distribution notice; (2) file a certification with the PBGC that the notices of benefit distribution were issued in accordance with 29 CFR § 2616.27, no later than 15 days after the issuance of the notices is completed; (3) make a distribution of plan assets in accordance with 29 CFR § 2616.29 no earlier that the 61st day, and no later than the 240th day (except as extended in accordance with Section IX, below), following completion of issuance of the notices of benefit distribution; and (4) file a Form 602 with the PBGC within 30 days after the distribution of assets is completed.

Note: *Whenever a plan terminates in a distress termination without sufficient assets to pay all benefit liabilities, the contributing sponsor(s) and each controlled group member are jointly and severally liable to the PBGC under section 4062(b) of ERISA for the total amount of unfunded benefit liabilities under the plan.*

II. DEFINITIONS

As used in these instructions –

"Affected party" means the PBGC and, with respect to a terminating plan, (a) each participant; (b) each beneficiary of a deceased participant; (c) each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA; (d) each employee organization that currently represents any group of participants; and (e) for any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate. In connection with any notice required under 29 CFR Part 2616, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated party.

"Benefit liabilities" means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

"Code" means the Internal Revenue Code of 1986, as amended.

"Contributing sponsor" means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of ERISA and section 412 of the Code.

"Controlled group" means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR Part 2612.

"Date of distribution" means (a) for benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefit passes from the plan to the insurer; and (b) for benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

"Distress termination notice" means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of ERISA and 29 CFR § 2616.24. PBGC Form 601 (including Schedule EA-D) is the distress termination notice.

"Distribution notice" means the notice issued to the plan administrator by the PBGC pursuant to 29 CFR § 2616.26(c), upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits. The notice instructs the plan administrator to distribute all plan assets in accordance with section 4044 of ERISA, and details the requirements for filing the post-distribution certification with the PBGC.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001 *et. seq.*).

"Guaranteed benefit" means a benefit that is guaranteed by the PBGC under section 4022(a) and (b) of ERISA and 29 CFR Parts 2613 and 2621.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

"Mandatory employee contributions" means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Notice of benefit distribution" means the notice to each participant and beneficiary, as required under 29 CFR § 2616.27, describing the benefit to be distributed to him or her.

"Notice of intent to terminate" means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of ERISA and 29 CFR § 2616.22. PBGC Form 600 is the notice of intent to terminate that must be filed with the PBGC. There is no prescribed form for the notice of intent to terminate for other affected parties. However, the notice must meet the requirements set forth in 29 CFR § 2616.22.

"Participant" means--

(a) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(b) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(c) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

"Proposed termination date" means the date specified as such by the plan administrator in a notice of intent to terminate or, if later, in the distress termination notice. A proposed termination date specified in the notice of intent to terminate may not be earlier than the 60th day, nor later than the 90th day, after the date of issuance/filing of the notice of intent to terminate. If the notice of intent to terminate is issued (or filed with the PBGC) on two or more dates, the proposed termination date in the notice of intent to terminate must be between 60 and 90 days after each date of issuance (or filing). A proposed termination date specified in the distress termination notice may not be earlier than the proposed termination date specified in the notice of intent to terminate, or (except with PBGC approval) later than the 90th day after the earliest date of issuance of any notice of intent to terminate.

"Single-employer plan" means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA).

"Sufficient for benefit liabilities" means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a) (18) of ERISA.

"Sufficient for guaranteed benefits" means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a) (17) of ERISA.

"Termination date" means the date established pursuant to section 4048(a) of ERISA.

"Title IV benefit" means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of ERISA and 29 CFR Part 2618. (This does not include any benefit that may be payable pursuant to section 4022(c) of ERISA.)

III. GENERAL INSTRUCTIONS FOR FORM 600, FORM 601, and FORM 602

The PBGC may return incomplete filings. Therefore, the filer should assure that an appropriate response is provided for each item, as follows:

1. If an item requests a numeric response, a number must be entered.

2. If an item provides a box or boxes to be checked, written responses are not acceptable.

3. No additions or deletions may be made to the certifications required to be signed by the plan administrator or enrolled actuary.

If an item requests a date, you should enter two digits in each box, *e.g.*, enter "07" for July.

Who Must File

The plan administrator or the plan administrator's authorized representative must submit all filings required to be made with the PBGC as part of a distress termination. Schedule REP-D (PBGC Form 600) must accompany the filing if it is made by a representative of the plan administrator.

Note: *While an authorized representative may submit the filing and sign any cover letter, in all cases the plan administrator must sign the Form 600, Form 601, and (where required) Schedule REP-D and Form 602. If the designated plan administrator is a board (or similar group) composed of employer and employee representatives, then at least one employer representative and one employee representative must sign the forms. If the designated plan administrator is other than an individual or a board, the forms must be signed by an officer of the designated plan administrator who has the authority to sign on behalf of that entity. Schedule EA-D must always be signed by an enrolled actuary.*

The PBGC will accept reproductions or other facsimiles of the forms. However, all forms require an original signature.

What and When to File

Form 600 and Form 601 with Schedule EA-D must be filed with the PBGC for all distress terminations. (In addition, if the plan is sufficient for at least guaranteed benefits and thus closes out in the private sector, the plan administrator must file Form 602.)

Form 600 must be filed at least 60 days and no more than 90 days prior to the proposed termination date, and it may not be filed before the notice of intent to terminate is issued to all other affected parties.

Form 601 with Schedule EA-D and any required supplemental information must be filed simultaneously no later than 120 days after the proposed termination date. You must complete the distress termination notice by submitting detailed participant and benefit information to the PBGC by the later of (1) 120 days after the proposed termination date or (2) 30 days after receipt of the PBGC's determination that the requirements for a distress termination have been satisfied pursuant to section 4041(c)(2)(B) of ERISA and 29 CFR § 2616.25. **Exception:** *If the enrolled actuary certifies that the plan is sufficient for at least all guaranteed benefits, you will not need to submit the participant and benefit information until the PBGC requests, in writing, that you do so.*

Note: *Initiation of a formal challenge to the termination under section 4041(a)(3) of ERISA does not relieve the plan administrator of the obligation to timely file Form 600 and Form 601 with Schedule EA-D.*

Form 602 must be filed no later than 30 days after completion of the distribution of plan assets pursuant to the termination. The distribution of plan assets must generally be completed within 180 days after you complete the issuance of the notices of benefit distribution. (See Section IX of these instructions for the requirements for the distribution of plan assets and for extension of the distribution deadline.)

The filing date for a document is the date on which the PBGC receives it, provided it is received no later than 4 p.m. on a weekday, other than a Federal holiday. Documents received after 4 p.m. or on weekends or Federal holidays will be deemed filed on the next regular business day.

In computing time periods, begin counting on the day after the event occurs. If the last day of the period falls on a Saturday, Sunday, or Federal holiday, then the period runs until the next regular business day.

Note: *The proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday, and is not deemed otherwise by the computation rule discussed above. For example, a notice of intent to terminate issued September 2, 1992, specifies a proposed termination date of October 31, 1992. The notice of intent to terminate was issued only 59 days, rather than the required 60 days, before the proposed termination date. The fact that October 31st falls on a Saturday does not cause the time period for this purpose to run until the following Monday.*

Where to File

Any document being filed for a distress termination may be delivered by mail or by hand to:

Pension Benefit Guaranty Corporation
Case Operations and Compliance Department
Room 5500 (Code 45200)
2020 K Street, NW
Washington, DC 20006-1860

For Questions, Problems, Copies of Forms

Plan administrators who are unsure whether their plans are covered by PBGC or who have other questions or problems may contact:

Pension Benefit Guaranty Corporation
Administrative Review and Technical
Assistance Division (Code 45400)
2020 K Street, NW
Washington, DC 20006-1860
Telephone: (202) 778-8800

Hearing impaired persons may telephone (202) 778-1958.

These phone numbers, and all other phone numbers in these instructions, are not toll-free numbers, and the PBGC cannot accept collect calls.

To request copies of the forms, contact the Pension Benefit Guaranty Corporation's Control Division (Code 45200) at the same address and telephone number as shown above.

Failure to Timely File Required Forms

Failure to timely file the completed forms may nullify the proposed plan termination. In addition, the PBGC may assess penalties pursuant to section 4071 of ERISA.

IV. SPECIFIC INSTRUCTIONS - FORM 600

Part I. Identifying Information

1a Enter the complete name of the plan as it appears on the plan document.

2a Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.

2b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.

2c If the EIN/PN entered in item 2b is different from that used in earlier filings with the PBGC (including premium and reportable event filings for this plan), the Department of Labor, or the Internal Revenue Service, enter the EIN/PN previously reported.

2e Enter the same 4-digit industry code that you entered on your most recent PBGC Form 1 (premium) filing.

3a Enter the name, address, and telephone number of the individual, board, or other entity, if any, specifically designated as plan

administrator by the terms of the plan or trust agreement. If none is so designated or if the contributing sponsor is so designated, enter "same".

Part II. General Plan Information

4 The proposed termination date may not be earlier than the 60th day after Form 600 is filed with the PBGC, nor later than the 90th day after the earliest date a notice of intent to terminate is issued (handed to affected parties or deposited with a mail or courier service) to any affected party.

5a For this purpose, "active participants" includes both currently employed participants and separated nonvested participants who are earning or retaining credited service under the plan.

6 Check whichever statement(s) best describes any change in the organization or structure of the contributing sponsor that is associated with, or resulted in, the decision to terminate the plan. These changes are not intended to correspond to the four statutory distress tests.

7 Check all that apply.

8b For this purpose, "multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer.

9b If you checked "Yes" in either items 8a or 9a, attach a statement listing the name and address of each contributing sponsor and each member of the contributing sponsor's controlled group as of the proposed termination date. For each entity listed, provide the employer identification number and identify the distress test each entity expects to meet.

10b If you checked "Yes" in item 10a, attach a statement describing each transaction that changed the composition of the contributing sponsor's controlled group. Include in the statement a listing of each member of the contributing sponsor's controlled group as of the transaction date(s) and a listing of each member of the controlled group after the transaction.

11d Section 4041(c)(2)(B)(ii) of ERISA and 29 CFR § 2616.3(d)(2) require that, in order to meet the reorganization distress test, the following conditions must be satisfied: (1) the reorganization proceedings have not been dismissed as of the proposed termination date; (2) the PBGC is notified concurrently with the appropriate court of any request to approve the termination; and (3) the termination is approved by the court.

11e A copy of the motion requesting court approval under the reorganization test, including any documents submitted in support of the request, must be submitted concurrently to the PBGC pursuant to section 4041(c)(2)(B)(ii)(III) of ERISA and 29 CFR § 2616.3(d)(2). If court approval was requested before the Form 600 is filed with the PBGC, enter the date on which the motion was filed and documents were submitted to the PBGC.

13a Check "Yes" if the plan has sufficient funds (cash, cash equivalents, and other liquid assets) available to pay estimated Title IV benefits when due for at least 180 days after the Form 600 is filed with the PBGC.

14 Beginning on the proposed termination date, section 4041(c)(3)(D)(ii)(IV) of ERISA and 29 CFR § 2616.4(c) require that the plan administrator reduce the benefits paid to a plan's participants and beneficiaries in pay status to the estimated benefit amounts determined in accordance with 29 CFR Part 2623. Note: *If you need assistance, you may call the PBGC's Actuarial Services Division at (202) 778-8838.*

15 All documents described in item 15 and submitted to the PBGC must be executed copies. Each document submitted must include the complete text as well as the signature page, and must indicate the effective date of the document and the date it was adopted. The PBGC will accept clear photocopies.

15a If your plan was adopted and has been in effect for 5 or more years, submit the plan document(s) and amendment(s) showing the provisions of the plan adopted and effective at the beginning of the 5-year period ending on the proposed termination date. You must also submit any plan amendments adopted and effective during the period. For plans in effect less than 5 years, submit the document establishing the plan and each subsequent amendment to the plan adopted and effective before the proposed termination date. (Attach a statement giving all actuarial equivalent factors, including early retirement reduction factors, if these factors are not included in the plan documents.)

15b Attach each trust agreement and/or each group annuity or group insurance contract that provides for management of plan assets, plan administration, or payment of benefits under the plan.

15c Attach a copy of the latest available financial statement of the plan and include a full listing of all assets.

15d Attach a copy of the most recent collective bargaining agreement (if any) that contains provisions relating to the plan.

15e Attach the most recent determination letter issued by the IRS that relates to the establishment of the plan, amendments to the plan, or partial termination of the plan. Attach all determination letters that relate to disqualification of the plan, and any later requalification.

15f Attach a copy of the most recent actuarial valuation of the plan.

15g Attach copies of the Form 5500, Schedule B and Schedule SSA filed for the 3 plan years ending before the proposed termination date.

V. SPECIFIC INSTRUCTIONS - FORM 600, SCHEDULE REP-D

Schedule REP-D may be used to designate a person or persons to represent you before the PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-D must be filed simultaneously with Form 600 if Form 600 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-D at any time that you wish to designate a representative or representatives. Schedule REP-D also may be used to revoke a prior designation.

Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 600 that you filed, or are filing, with the PBGC.

Part III. Retention/Revocation of Prior Designation(s)

If you wish a previous designation for the same termination to remain in effect, check "Yes" in items 7a and 7b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect.

Part IV. Signature

You, as plan administrator, must sign the Schedule REP-D. (The PBGC will accept facsimiles of the form, but your signature must be an original.) Note: *If the plan administrator is a board (or similar group) composed of employer and employee representatives, at least one employer representative and one employee representative must sign this form. If the plan administrator is other than an individual or a board, this form must be signed by an officer of the plan administrator who has the authority to do so.*

VI. SPECIFIC INSTRUCTIONS - FORM 601

The plan administrator must file a Form 601 including a Schedule EA-D to request a distress termination. The Form 601 must be signed by the plan administrator and the Schedule EA-D must be signed by an enrolled actuary.

Part I. Identifying Information

4 Enter the PBGC Case Number. You will find this number on the letter that the PBGC sent to you acknowledging receipt of the Form 600 for this plan.

Part II. Specific Plan Information

5a The proposed termination date entered in item 5a may be later than the proposed termination date specified in the notice of intent to terminate, but may not be later (except with PBGC approval) than the 90th day after issuance of the notice of intent to terminate is begun, *i.e.*, the earliest date a notice of intent to terminate is issued to any affected party.

EXAMPLE - *The plan administrator begins issuing the notice of intent to terminate on September 29, 1992, and completes the issuance to all affected parties (and files Form 600 with the PBGC) on October 1, 1992, specifying a proposed termination date 63 days later, December 3, 1992. In item 5a, the plan administrator may specify a proposed termination date of any day from December 3, 1992, to and including December 28, 1992.*

6a Enter the earliest date the notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party.

6b Enter the latest date the notice of intent to terminate was handed to, or deposited with a mail or courier service directed to, any affected party (other than the PBGC).

FORM 601

The "latest" date of issuance of any notice of intent to terminate is the date the last copy is issued to any affected party reasonably known or discovered during the 60-90 day period before the proposed termination date. It is your responsibility to use your best efforts to locate all affected parties by taking all necessary and appropriate steps under the circumstances. (The discovery of additional affected parties after the above 60-90 day period will not cause the notice to be untimely if you could not reasonably have been expected to know of the additional affected parties and if you promptly issue the notice of intent to terminate to each additional affected party.)

7a Section 4041(c)(2)(B) of ERISA and 29 CFR § 2616.3(d) provide that a plan may terminate in a distress termination only if each contributing sponsor and each member of the sponsor's controlled group meet at least one of the distress tests.

7b If you checked "Yes" in item 7a, attach a statement listing the name, address, and employer identification number of each contributing sponsor and each controlled group member and identify the distress test met by each. Also attach the information (listed below) required to prove that the contributing sponsor and each controlled group member satisfies the distress test(s) identified.

If you checked "No" in item 7a, the plan may not terminate in a distress termination and you should not complete the rest of this form. Unless the PBGC determines that the plan can qualify for a standard termination, the plan is an ongoing plan.

The distress tests are as follows:

FORM 601

"Liquidation test". A person has filed, or had filed against it, as of the proposed termination date, a petition seeking liquidation in a case under Title 11, United States Code, or under any similar law of a State or political subdivision of a State and such case has not, as of the proposed termination date, been dismissed; or a reorganization case (described below) is converted to a liquidation case as of the proposed termination date.

Section 4041(c)(2)(B)(i) of ERISA and 29 CFR § 2616.3(d)(1) refer explicitly only to liquidation under federal bankruptcy or state insolvency law and require that the liquidation case, as of the proposed termination date, not be dismissed. In determining whether a person meets the liquidation distress test, the PBGC will consider a case in which liquidation was completed prior to the proposed termination date, or was achieved through a foreclosure by secured creditors (as a result of which the person ceased operations and had all of its assets seized by such secured creditors) or through an assignment of all of the person's assets for the benefit of creditors. (In any such case, however, the PBGC will find the liquidation test is met only if it concludes that there is no indication that a principal purpose of the liquidation is to evade liability with respect to the plan or the PBGC or otherwise to abuse the termination insurance program.)

"Reorganization test". A person has filed, or had filed against it, as of the proposed termination date, a petition seeking reorganization in a case under Title 11, United States Code, or under any similar law of a State or political subdivision of a State; such case has not, as of the proposed termination date, been dismissed; such person timely submits a copy of any requests for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination to the PBGC at the time the request is made; and the bankruptcy court (or other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all of its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

"Business continuation test". A person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, such person will be unable to pay its debts when due and will be unable to continue in business.

"Pension costs test". A person demonstrates to the satisfaction of the PBGC that the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline of its workforce covered as participants under all single-employer pension plans for which it is a contributing sponsor.

The following proof of satisfaction of a distress test(s) must be attached:

Liquidation test: A copy of the filed petition showing the court docket number or a copy of any documents showing a foreclosure by a secured creditor or an assignment for the benefit of creditors. If this information was provided to the PBGC with Form 600, it need not be provided again.

Reorganization test: A copy of the filed petition showing the court docket number, a copy of the notification to the PBGC of the request for approval of the plan termination by the bankruptcy court or appropriate state court, and a copy of the order (if any) of the bankruptcy court or the appropriate state court approving the termination. If any of this information was provided to the PBGC with Form 600, it need not be provided again.

FORM 601

Business continuation test:

(1) Financial statements: Audited financial statements of the person for the 5 most recent fiscal years ending prior to the proposed termination date. If audited financial statements are not available, submit available statements and include a brief statement explaining why audited statements are not available. The financial statements must be augmented as follows:

(A) Identify pension costs recorded in each year for the pension plan that is the subject of this application. Pension costs should include an estimate of the annual and quarterly minimum funding requirements for the year in progress at the time of the application and for the next 3 years.

(B) If the person has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the 5 years covered by the financial statement for only the portion of the business that is currently expected to continue. State the significant assumptions made about the allocation of joint costs.

(C) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.

(D) If financial statements are submitted that do not contain complete footnote disclosures, they must be augmented by a schedule identifying all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments, interest rate, collateral, significant covenants, and whether the loan is in default.

(E) Identify and explain any material changes in financial position since the date of the last financial statement.

(2) Business plans and projections: Projections of future revenues, expenses, and cash flow for a minimum of 3 fiscal years in addition to the year in progress at the time of the distress application. Explicitly state all major strategic and economic assumptions made in development of the projections. Explain the reasons for any material changes from historical to projected results. If the company has or intends to obtain a line of credit with borrowing availability based on the amount of eligible collateral, include in the projections of cash flow a projection of the amount available under the line of credit and the amount of borrowing against that availability. The projections must include, or be augmented by, the projected cost of meeting minimum funding standards and, alternatively, the cost of plan termination based on payment of projected plan termination liabilities. The business plans and projections must be further augmented by submission of documents or information as follows:

(A) All business or operating plans prepared by or for management, including all explanatory text and schedules.

(B) All financial submissions, if any, made within the prior 3 years to a financial institution, government agency, or investment banker in support of possible outside financing or sale of the business.

(C) All recent financial analyses done by an outside party, with a certification by the company's chief executive officer that the information on which each analysis is based is accurate and complete.

(3) Certification by the chief executive officer that all of the information submitted is accurate and complete to the best of the individual's knowledge, and that the entity will not be able to continue in business unless the plan is terminated.

(4) Any other relevant information.

Pension costs test:

(1) The name and plan number (PN) of each single-employer defined benefit plan maintained by the contributing sponsor and each controlled group member.

(2) The latest Form 5500, Schedule B, filed for each plan named in (1).

(3) For each plan named in (1), a plan census showing total, active, and retired participants for the most recent 5 plan years ending prior to the proposed termination date (this data may be provided by submitting the relevant Form 5500, Schedule B).

(4) Audited financial statements for the person's most recent 5 fiscal years ending prior to the proposed termination date, updated to show any material changes, with a breakout of the contributing sponsor's total pension costs, including any defined contribution plans, as a percentage of the person's total wage costs and a statement of the total costs per plan. If audited financial statements are not available, submit unaudited statements and include a brief statement explaining why audited statements are not available.

(5) Reason(s) for the decline in workforce.

(6) Any other relevant information.

8a If the PBGC is advised, before issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to 29 CFR § 2616.26(b) or (c), that a formal challenge to the termination has been initiated, the PBGC will suspend the termination proceeding and will so advise the plan administrator in writing. If the PBGC is advised of such a challenge to the termination after the issuance of either notice but before the termination procedure is concluded, the PBGC may suspend the termination proceeding and, if it does, will so advise the plan administrator in writing. For this purpose, the following definitions apply:

(1)"Formal challenge to a termination" means the occurrence of any of the following actions asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement: (A) the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or (B) the commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(2)"Existing collective bargaining agreement" mean a collective bargaining agreement that (A) by its terms, (i) has not expired or (ii) is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and (B) has not been made inoperative by judicial ruling. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement" whether or not any or all of its terms continue to apply by operation of law.

8b If you checked "Yes" to item 8a, attach a copy of the formal challenge and a statement showing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.

9 If the plan does not have sufficient assets to provide all guaranteed benefits, the benefits of participants and beneficiaries currently receiving benefits must be reduced pursuant to section 4041(c) of ERISA and 29 CFR § 2616.4(c), to the estimated benefit amounts determined in accordance with 29 CFR Part 2623, as of the proposed termination date. *Note: If you need assistance, you may call the PBGC's Actuarial Services Division at (202) 778-8838.*

FORM 601

12 Check "Yes" if (1) the Internal Revenue Service has waived the minimum funding requirements for this plan pursuant to section 303 of ERISA and section 412(d) of the Code for one or more plan years and (2) the amounts waived have not been fully paid to the plan as of the date this form is filed with the PBGC.

13 Check "Yes" if there are any requests for a waiver of the minimum funding requirements pending before the IRS.

14a Check "Yes" if there are amounts due and owing the plan pursuant to the minimum funding requirements of ERISA and the Code that (1) have not been paid to the plan and (2) for which no minimum funding waivers have been granted and no waiver requests are pending before the IRS.

Note: *Controlled group members are jointly and severally liable for amounts that are required to be contributed to the plan pursuant to section 302 of ERISA and section 412 of the Code. All amounts owed the plan, including unpaid contributions, are plan assets and it is generally the plan administrator's responsibility to attempt to collect such amounts.*

VII. SPECIFIC INSTRUCTIONS - FORM 601, SCHEDULE EA-D

Schedule EA-D must be used to certify the funding level of a plan terminating in a distress termination. An enrolled actuary must certify whether, as of the proposed termination date, a plan is (1) insufficient to provide all guaranteed benefits, (2) sufficient to provide all guaranteed benefits but not sufficient to provide all benefit liabilities, or (3) sufficient to provide all benefit liabilities.

The plan administrator must file the completed Schedule EA-D together with the Form 601. Schedule EA-D must be signed by an enrolled actuary.

SCHEDULE EA-D

If plan assets are sufficient (as of the proposed termination date) to provide at least all guaranteed benefits, the plan administrator must distribute plan assets in accordance with section 4041(c)(3)(B)(ii) of ERISA and 29 CFR § 2616.29. Distribution may be made only after the PBGC issues a distribution notice.

If you find, after a distribution notice is issued, that the plan is no longer sufficient for guaranteed benefits, you must promptly notify the PBGC in writing of that fact, and shall take no further action to implement the plan termination pending the PBGC's determination and notice of concurrence or non-concurrence with your finding pursuant to 29 CFR § 2616.28(b). If you find that the plan is sufficient for guaranteed benefits but no longer sufficient for benefit liabilities, you must promptly notify the PBGC in writing of this fact, but shall continue with the distribution in accordance with 29 CFR § 2616.29.

Note: *If the plan has sufficient assets to provide all benefit liabilities, the plan should be terminated in a standard termination, because the standard termination process is faster and less costly for the plan. If, after beginning a distress termination proceeding, you determine that the plan is sufficient for all benefit liabilities, you should promptly notify the PBGC. (In appropriate circumstances, PBGC may, upon request, permit a conversion of the distress termination to a standard termination.)*

Please follow the instructions below when completing this form. If you have questions about how a particular item applies to your situation, contact the PBGC Case Officer assigned to your case. If you have any questions on determining or valuing guaranteed benefits, or on determining the amount of due and unpaid employer contributions, contact:

Pension Benefit Guaranty Corporation
Actuarial Services Division (Code 41300)
2020 K Street, NW
Washington, DC 20006-1860
Telephone: (202) 778-8838

SCHEDULE EA-D

Part I. Sufficiency Level as of Proposed Termination Date

1 For the purpose of determining if a plan is sufficient for guaranteed benefits, you must include any nonguaranteed benefits that a participant is entitled to receive because of the allocation of assets priorities in section 4044 of ERISA and 29 CFR Part 2618. This means that you must include all nonguaranteed benefits to which assets are allocated. (To determine what benefits are guaranteed benefits, see 29 CFR Parts 2613 and 2621.)

2a Enter the estimated fair market value, as of the proposed termination date, of the plan assets available to pay plan benefits, excluding contributions that are owed to the plan but unpaid. Plan assets available to pay for benefits include all plan assets remaining after subtracting all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the termination date, expenses, fees, and other administrative costs.

2b Enter the total amount of contributions owed to the plan but unpaid as of the proposed termination date. The amount of unpaid contributions is the greater of (1) amounts required to be contributed to the plan pursuant to section 302 of ERISA and section 412 of the Code, or (2) amounts required to be contributed to the plan pursuant to commitments contained in plan or trust agreements or a collective bargaining agreement; less amounts actually contributed.

2c Enter the value (as of the proposed termination date) of the amount of unpaid contributions included in item 2b that is estimated to be collectible, valued in the same manner as other receivables. If that amount cannot be valued, enter "0".

SCHEDULE EA-D

2d Enter the sum of the amounts entered on lines 2a and 2c.

3 Enter the estimated present value of Title IV benefits. Title IV benefits are determined by allocating plan assets to plan benefits in accordance with section 4044 of ERISA and 29 CFR Part 2618. Value Title IV benefits as of the proposed termination date in accordance with Subpart C of 29 CFR Part 2619.

4 Enter the estimated present value of all benefit liabilities, valued as of the proposed termination date in accordance with 29 CFR Part 2619, Subpart C. With respect to a participant who, as of the proposed termination date, is not receiving benefits and has not made a valid benefit election, the value of the participant's benefit must include the value of all optional forms of benefits for which he or she is eligible under the terms of the plan.

Part II. Sufficiency Level as of Proposed Distribution Date

Complete this Part only if the plan is sufficient (as of the proposed termination date) for at least guaranteed benefits.

5 The proposed distribution date is the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a distribution notice from the PBGC when plan assets are sufficient (as of the proposed termination date) for at least guaranteed benefits. The proposed distribution date must be no earlier than the 61st day after the Form 601 is filed with the PBGC. (Actual distribution must be made no earlier than the 61st day, and no later than the 180th day, following the day on which the plan administrator completes issuance of the notices of benefit distribution.)

SCHEDULE EA-D

6 In determining whether the plan's assets are projected to be sufficient (as of the proposed distribution date) to provide for all guaranteed benefits or all benefit liabilities, take receivables (*e.g.*, due and unpaid employer contributions) into account only to the extent they are projected to be collected on or before the proposed distribution date. All plan assets must be allocated to plan benefits in accordance with section 4044 of ERISA and 29 CFR Part 2618.

Value of Annuity Contracts

The value of benefit liabilities that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such benefit liabilities (see instructions to item 5a of Form 602).

Note: *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 601 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before completing item 6.*

Value of Other Benefits

To value benefits that will be provided other than through the purchase of annuity contracts, the enrolled actuary must use the rate of interest in sections 411(a)(11) and 417(e)(3) of the Code. The interest rate(s) shall be determined as of the date set forth in the plan if the plan provision is in accord with the IRS rules concerning the date as of which the interest rate is determined; otherwise, the interest rate(s) shall be determined as of the date of distribution. (See 26 CFR § 1.417(e)-1(d)(3).) Note: *If a plan contains a provision that complies with Treasury Reg. § 1.417(e)-1(d)(3), the interest rate is determined by substituting "date of distribution" for "annuity starting date" wherever used in the plan.*

SCHEDULE EA-D

Generally, the rate described in sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder is whichever of the following two rates or rate structures provides the greater benefit: (1) the rate specified in the plan; or (2) the "applicable interest rate" (or, if the present value of vested accrued benefits exceeds $25,000 using the applicable interest rate, a rate no greater than 120 percent of the applicable interest rate). Note: *When using the alternative 120 percent of the applicable interest rate, the resulting present value of the vested accrued benefit may not be less than $25,000.*

The "applicable interest rate" is the interest rate that would be used by the PBGC for purposes of determining the present value of a lump sum distribution on plan termination. Note: *The appropriate deferral factors must be used for valuing deferred annuities.*

The applicable interest rates and factors are published at 29 CFR Part 2619, Appendix B, and updated in accordance with that regulation. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC also makes interest rate information available through a telephone hotline. The hotline number is (202) 778-8899.

VIII. PARTICIPANT AND BENEFIT INFORMATION REQUIREMENTS

Unless the enrolled actuary certifies that the plan is sufficient for at least all guaranteed benefits, the plan administrator is required to provide participant and benefit information to the PBGC by the later of (1) 120 days after the proposed termination date or (2) 30 days after receipt of the PBGC's determination that the requirements for a distress termination have been satisfied. (If the enrolled actuary certifies that

the plan is sufficient for at least guaranteed benefits, the participant and beneficiary information must be provided, in accordance with the PBGC's instructions, at such time as the PBGC requests it in writing.) Failure to provide complete participant and benefit information may result in the PBGC's nullifying the distress termination for your plan.

You are required to provide all information necessary to calculate and value monthly benefits and plan benefits for each plan participant/beneficiary. All information, benefit determinations, and benefit valuations must be as of the proposed termination date. The information that is required to be submitted to the PBGC is not required to be in any specific format; however the PBGC requests that this data be provided electronically. We will provide you with the format in which we would like your data if and when we determine that you satisfy the distress criteria. If you have any questions concerning this electronic data transfer to the PBGC, contact the Actuarial Services Division at the address and telephone number set forth in Section VII of these instructions.

The following information, at a minimum, must be provided for each participant/beneficiary.

1. Participant categories. Information must be provided by categories as follows: (a) retired participants including any beneficiary receiving benefits from the plan; (b) inactive participants entitled to future benefits; (c) active participants with vested benefits; and (d) active participants without vested benefits.

2. Name of participant. Denote each substantial owner, as defined in section 4022(b)(5)(A) of ERISA, by entering an asterisk (*) in front of the person's name, and enter in parentheses the highest percentage of ownership during the five years preceding the proposed termination date for each substantial owner.

3. Address.

4. Social security number.

5. Marital status and, if available, the following information on spouses: name, social security number, and date of birth.

SCHEDULE EA-D

6. Sex.

7. Date of birth.

8. Beneficiaries. If the participant is entitled to a benefit form that provides an annuity or lump-sum death benefit to a surviving beneficiary, *e.g.*, a qualified joint and survivor benefit, provide the name of the beneficiary for that participant and the beneficiary's address, social security number, sex, and date of birth.

9. Retiree benefit information. For each retiree, provide the benefit commencement date, form of benefit, and the type of benefit (normal, early, late, or disability).

10. Date employment began or, if different, date plan participation began.

11. Date employment terminated, if earlier than proposed termination date.

12. Credited service. Provide the amount of all credited service as defined in the plan document. Show any break(s) in service between date of hire and date of termination of employment or proposed termination date.

13. Compensation. If compensation is a factor in the benefit formula, provide the applicable compensation figure(s) as defined in the plan document. If the benefit formula provides that the past service benefit and the future service benefit are determined using different compensation figures, enter the compensation for the past service benefit in one column and the compensation for the future service benefit in another.

14. Monthly plan benefit. This is the monthly plan benefit in the normal annuity form under the plan based on credited service as of the proposed termination date. If the monthly plan benefit is greater than the accrued benefit, show how the benefit was calculated. Provide any other information that is necessary to show the determination of each participant's plan benefit.

The following are examples of the type of data to be provided.

SCHEDULE EA-D

a. If the plan is contributory, provide the total amount of each employee's contributions with and without interest credited by the plan and the portion of the normal retirement benefit attributable to employee contributions. If the plan credits interest at a rate (or rates) other than those specified in section 411(c)(2)(C)(iii) of the Code, provide the amount of employee contributions plus interest computed in accordance with that Code provision.

b. If the accrued monthly benefit is integrated using an offset or excess method, provide the offset or the excess benefit and the data used in determining these amounts.

c. If, before retirement, the accrued monthly benefit is determined from the cash value of insurance or annuity contracts, provide the cash value.

15. **Adjusted monthly plan benefit.** If, as of the proposed termination date, an individual is receiving or has elected to receive benefits in an optional form or at an early retirement age permitted by the plan, show the amount payable under that election.

16. **Plan adjustment factors.** Provide any factors used by the plan to adjust benefits for payment in an optional form or as an early or late retirement benefit.

17. **Value of adjusted monthly plan benefit.** Provide the estimated value of the plan benefit as of the proposed termination date, calculated in accordance with 29 CFR Part 2619, Subpart C. With respect to a participant who, as of the proposed termination date, is not receiving benefits and has not made a benefit election, the value of the participant's benefit must include the value of all optional forms of benefits for which he or she is eligible under the terms of the plan.

18. **Vesting percentage.** The vesting percentage is to be calculated without regard to any increase in vesting due to the termination. For contributory plans, enter the percentage applicable to the portion of the accrued benefit provided by employer contributions.

SCHEDULED EA-D

19. **Monthly vested adjusted plan benefit.** The portion of the adjusted monthly plan benefit provided by employer contributions is multiplied by the vesting percentage and this amount is added to the benefit, if any, provided by employee contributions.

20. **Monthly guaranteed benefit.** This is the monthly vested adjusted benefit (number 19) reduced, if necessary, in accordance with PBGC regulations and limitations for single-employer plans. Provide the calculations, *i.e.*, phase-in, substantial owner limitation, or maximum guaranteeable benefit. These benefits should be calculated without regard to any asset allocation.

21. **Value of monthly guaranteed benefit.** Estimated value of monthly guaranteed benefit as of the proposed termination date, calculated in accordance with 29 CFR Part 2619, Subpart C.

22. **Title IV benefits.** If plan assets, when allocated in accordance with section 4044 of ERISA and 29 CFR Part 2618, can provide benefits to any participant in excess of the monthly guaranteed benefit, then the benefits that can be provided should be computed.

All computations used in the completed allocation process should be furnished along with an explanation as to how the participant's Title IV benefits were determined including any adjustments made to the amount of the benefit for the annuity form and the age at which it is assumed to be payable, *i.e.*, expected retirement age. Include any special schedules that were required to be prepared for the plan under section 414(l) of the Code.

23. **Value of Title IV benefits.** Estimated value of Title IV benefits (number 22) as of the proposed termination date calculated in accordance with 29 CFR Part 2619, Subpart C.

Note: *If additional participant and beneficiary information is needed by the PBGC to pay benefits pursuant to section 4061 or 4042(c) of ERISA, the PBGC may require that additional information be submitted at such time as the PBGC requests in writing.*

IX. SPECIFIC INSTRUCTIONS - FORM 602

Form 602 is the form that must be used by the plan administrator to certify that the distribution of assets was completed in accordance with section 4041(c) of ERISA. Form 602 must be filed with the PBGC within 30 days after the completion of the distribution of assets.

Note: *Pursuant to section 4071 of ERISA, the PBGC may impose a civil penalty of up to $1,000 per day for each day for which the Form 602 is overdue. This penalty may be imposed beginning on the 31st day after the distribution is completed.*

You must make the distribution of plan assets, after receiving a distribution notice from the PBGC, no earlier than the 61st day, and no later than the 180th day, following the day on which you complete the issuance of the notices of benefit distribution pursuant to 29 CFR § 2616.27(c). This 180-day period may be extended according to the rules set forth below.

Note: *Plan assets may not be distributed if either the plan administrator or the PBGC has made a finding that the plan is insufficient for guaranteed benefits.*

Automatic extension

The distribution deadline will automatically be extended until the 60th day after the plan's receipt of a favorable IRS determination letter, if --

(1) on or before the date that the plan administrator completes issuance of the notices of benefit distribution, the plan administrator submitted to the IRS a complete request for a determination letter with respect to the plan's tax-qualification status upon termination;

(2) the plan administrator does not receive the IRS's determination letter at least 60 days before the expiration of the 180-day period for distribution; and

(3) on or before the last day of the 180-day period, the plan administrator notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in (1) and (2) have been met.

Discretionary extension

If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period, the plan administrator may file a written request with the PBGC for an extension of the distribution deadline.

The PBGC will grant a discretionary extension only if the PBGC is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and distribution can in fact be completed by the date requested.

The request must be filed no later than 30 days before the expiration of the 180-day (or extended) period, must explain the reason for the request, and must provide a date certain by which the distribution will be made if the extension is granted. All requests for extensions must be in writing addressed to:

Case Officer, Case Processing Division
Pension Benefit Guaranty Corporation
Room 5500 (Code 41400)
2020 K Street, NW
Washington, DC 20006-1860

Part I. Distribution Information

3 Enter the PBGC Case Number. You will find this number on the letter that the PBGC sent to you acknowledging receipt of the Form 600 for this plan.

4 Enter the date on which the distribution of assets was completed.

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing benefit liabilities passes irrevocably from the plan administrator to the insurer.

A distribution of assets in a manner other than by the purchase of an annuity contract occurs on the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant

or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

6a The contract that is purchased must be a single premium, non-participating (except as discussed below), non-surrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased. A participating annuity contract may be purchased to provide the annuity benefits only if the plan is sufficient for all benefit liabilities and: (1) all benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and non-cancellable obligation of the insurer; (2) in no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and (3) no amount of residual assets to which participants are entitled will be used to pay for the participation feature. Specifically, if all or a portion of the residual assets will be distributed to participants, the additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor. If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature. If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

7 If you have been unable to locate certain participants after having made a reasonable effort to do so, you must purchase irrevocable commitments to provide benefits for each participant who has not been located. In the alternative, if the benefit of any unlocatable participant is valued at $3,500 or less and would otherwise be distributed in a lump sum, you may deposit

the monies that would otherwise be distributed into an interest-bearing bank account opened in the participant's name at a federally insured institution. In the limited case where you have made every reasonable effort to locate missing participants and to locate institutions that are willing to open individual interest-bearing accounts, but are still unable to complete the distribution in this manner, then the use of a pooled interest-bearing account may be appropriate.

If such an account (individual or pooled) is opened, it must be maintained by a fiduciary whom you have designated and who continues to have ongoing fiduciary obligations to those missing plan participants. The fiduciary must keep clear, up-to-date records of each participant's opening balance and earnings throughout the life of the account and must be available to make every reasonable effort to assist those participants who do come forward to claim their benefits.

8a As soon as practicable after a distribution by the purchase of an irrevocable commitment, you or the insurer must provide each participant and beneficiary with a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

If such a contract or certificate is not available before the deadline for filing Form 602, you must, no later than that deadline, provide each participant and beneficiary with a written notice stating:

(1) that the obligation for providing the benefit has transferred to the insurer;

(2) the name and address of the insurer;

(3) the name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(4) that the participant or beneficiary will receive from the plan administrator or the insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

9 Enter the name and address of the insurer(s), if any, that made an irrevocable commitment to provide benefits under the plan. The name must be the full official name of record.

FORM 602

10 Enter the name, address, and telephone number of the person keeping the plan records. The contributing sponsor or plan administrator must keep records supporting the calculation and valuation of benefits and assets for at least six years after the date the post-distribution certification is filed.

11 In reporting values, use the actual cost to the plan of the distribution (the amount of any lump sum distribution; the price paid for a nonparticipating annuity contract).

PBGC Form 600

PBGC
U.S. GOVERNMENT AGENCY

Distress Termination
Notice of Intent to Terminate

Approved OMB 1212-0036
Expires 00/00/00

File this form with the Pension Benefit Guaranty Corporation for a distress termination for which a notice of intent to terminate is issued on or after _____.

Do NOT file this form with the Internal Revenue Service.

DRAFT

PART I. IDENTIFYING INFORMATION

1a Plan name _____

b Plan effective date ☐☐☐ (Month Day Year)

c Last day of plan year ☐☐ (Month Day)

2a Contributing sponsor

_____
Name

_____
Address (number and street)

_____ _____ _____ Telephone number ( ) _____
City or town State Zip Code Area code

b Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ (Enter 9 digit EIN) ☐☐☐ (Enter 3 digit PN)

c If you used a different EIN or PN for this contributing sponsor/plan in previous filings with the PBGC, the Department of Labor, or the Internal Revenue Service, also show the number(s) previously reported ☐☐☐☐☐☐☐☐☐ (Enter 9 digit EIN) ☐☐☐ (Enter 3 digit PN)

d Contributing sponsor's tax year end ☐☐ (Month Day)

e Industry code ☐☐☐☐

3a Plan administrator (If same as 2a, enter "same".)

_____
Name

_____
Company

_____
Address (number and street)

_____ _____ _____ Telephone number ( ) _____
City or town State Zip Code Area code

b Name, address, and telephone number of person to be contacted if more information is needed. (If same as 3a, enter "same".)

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

PART II. GENERAL PLAN INFORMATION

4 Proposed termination date

Month Day Year

5 Estimated number of plan participants as of the proposed termination date:

a Active Participants:
(i) Fully vested
(ii) Partially vested
(iii) Nonvested
(iv) Total active participants (add a(i) through (iii))

b Retirees or beneficiaries receiving benefits

c Separated vested participants entitled to receive benefits

d Total (add a(iv) through c)

6 Changes in contributing sponsor associated with plan termination:

a ☐ No change
b ☐ Reorganization as part of bankruptcy or similar proceeding
c ☐ Merger of existing subsidiaries or divisions, not involving bankruptcy
d ☐ Sale or closing of subsidiaries or divisions, not involving bankruptcy
e ☐ Acquisition by another business
f ☐ Acquisition of another business
g ☐ Liquidation

7 Intention concerning expected pension coverage for currently employed participants covered under the terminated plan:

a ☐ No new plan
b ☐ New or existing defined benefit plan
c ☐ New or existing profit-sharing plan
d ☐ New or existing 401(k) plan
e ☐ Other new or existing plan, specify

8a Is there more than one contributing sponsor?

Yes ☐ No ☐

b If "Yes", is this a multiple employer plan?

Yes ☐ No ☐

9a Is the contributing sponsor(s) a member of a controlled group?

Yes ☐ No ☐

b If you checked "Yes" in 8a or 9a, attach a statement identifying each contributing sponsor and each member of the contributing sponsor's controlled group as of the proposed termination date and the distress test each entity expects to meet.

10a Has there been a change in the composition of a contributing sponsor's controlled group within the 5-year period prior to the proposed termination date?

Yes ☐ No ☐

b If "Yes", attach a statement that describes the transaction(s).

11a Has the contributing sponsor(s) filed, or had filed against it, a petition seeking reorganization in bankruptcy under Chapter 11, liquidation in bankruptcy under Chapter 7, or reorganization or liquidation in a similar proceeding under the laws of a state or a political subdivision of a state?

Yes ☐ No ☐

b If you checked "Yes" in 11a, are the proceedings still ongoing?

Yes ☐ No ☐

c If "Yes", attach a copy of the petition showing the court docket number. If "No", attach a copy of the order dismissing or otherwise resolving the proceedings.

For reorganization under Chapter 11 or similar state proceeding, complete item 11d.

d Has the bankruptcy court been requested to approve the termination of the plan?

Yes ☐ No ☐

e If "Yes":

(i) Enter the date of request to the court

Month	Day	Year

(ii) Enter the date documents were submitted to the PBGC

Month	Day	Year

12a Are all eligible participants/beneficiaries, who are entitled to and have applied for benefits, receiving such monthly benefits from the plan?

Yes ☐ No ☐

b If "No", attach a statement as to the reason for non-payment, including the number of participants/beneficiaries and total monthly benefits not being paid.

13a Are the plan assets expected to be sufficient to continue to pay all benefits when due during the next 180 days?

Yes ☐ No ☐

b If "No", attach an explanation.

14a Are any participants/beneficiaries receiving benefits in excess of estimated Title IV benefits?

Yes ☐ No ☐

b If "Yes", are they scheduled to be reduced to the estimated Title IV level as of the proposed termination date?

Yes ☐ No ☐

15 Attach copies of the following documents:

a All plan documents, including all amendments within last five years;
b Trust documents and/or insurance contracts;
c Most recent financial statement of plan assets;
d Collective bargaining agreements relating to the plan;
e IRS determination letter(s);
f Most recent plan actuarial report; and
g Form 5500, Schedules B and SSA (last three years).

16 The plan records are currently available at:

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

PART III. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- I am implementing the termination of the plan in accordance with all applicable laws and regulations; and

- the information contained in this filing is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Plan administrator's name (type or print)

Plan administrator's signature Date

PBGC
U.S. GOVERNMENT AGENCY

Schedule REP-D
(PBGC Form 600)

Designation of Representative

Approved OMB 1212-0036
Expires 00/00/00

DRAFT

PART I. IDENTIFYING INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 Plan administrator

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

PART II. DESIGNATION OF REPRESENTATIVE(S)

4 I, _____, plan administrator of the above-named pension plan, hereby appoint the following representative(s) to act on my behalf before the Pension Benefit Guaranty Corporation on all matters (other than those specifically excluded below) relating to the termination of the above-named pension plan:

5 Representative(s)

a

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

b

Name _____

Company _____

Address _____ (number and street)

City or town _____ State _____ Zip Code _____ Telephone number ( ) _____
Area code

6 Matters excluded (list any specific acts with respect to the plan termination that you are excluding from the acts otherwise authorized in this designation):_____

_____

_____

_____

PART III. RETENTION/REVOCATION OF PRIOR DESIGNATION(S)

7a Have you filed any prior designation(s) of representative for this termination?

Yes ☐ No ☐

b If "Yes", do you want any such prior designation(s) of representative to remain in effect? (Attach a copy of all prior designations that are to remain in effect.)

Yes ☐ No ☐

PART IV. SIGNATURE OF PLAN ADMINISTRATOR

Note: The PBGC will not accept unsigned designations.

In executing this document, I certify that the foregoing is true and correct, and recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Signature	Date	Title (if applicable)
Type or print name		
Signature	Date	Title (if applicable)
Type or print name		

PBGC Form 601

PBGC
U.S. GOVERNMENT AGENCY

Distress Termination Notice
Single-Employer Plan Termination

Approved OMB 1212-0036
Expires 00/00/00

File this form with the Pension Benefit Guaranty Corporation for a distress termination for which a notice of intent to terminate is issued on or after _____.

Do NOT file this form with the Internal Revenue Service.

DRAFT

PART I. IDENTIFYING INFORMATION

1 Plan name _____

2 Contributing sponsor _____

3 Employer identification and plan numbers

☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

4 PBGC Case number _____

PART II. SPECIFIC PLAN INFORMATION

5a Proposed termination date

☐☐☐
Month Day Year

b Proposed termination date stated in notice of intent to terminate (if different from 5a)

☐☐☐
Month Day Year

6a Earliest date notice of intent to terminate issued to affected parties

☐☐☐
Month Day Year

b Latest date notice of intent to terminate issued to affected parties (other than PBGC)

☐☐☐
Month Day Year

7a Does each contributing sponsor and each member of a contributing sponsor's controlled group meet one of the distress tests described in section 4041(c)(2)(B) of ERISA and 29 CFR § 2616.3?

Yes ☐ No ☐

b Attach a statement identifying each contributing sponsor and each controlled group member and the distress test met by each. Also attach the information to demonstrate that each contributing sponsor and controlled group member meets the distress test(s) identified.

8a Has a formal challenge to the termination been initiated under an existing collective bargaining agreement?

Yes ☐ No ☐ N/A ☐

b If "Yes", attach a copy of the formal challenge and a statement describing the challenge.

9 For plans that were paying benefits in excess of Title IV benefits, have the benefits of participants/beneficiaries in pay status been reduced to the estimated Title IV benefits pursuant to 29 CFR Part 2623?

Yes ☐ No ☐ N/A ☐

10 Has the plan ever required employee contributions?

Yes ☐ No ☐

11a Have you filed or will you file with the Internal Revenue Service an application for a determination letter on the termination of this plan?

Yes ☐ No ☐

b If "Yes", enter the district :

_____

and filing date: ☐☐ ☐☐ ☐☐☐☐
Month Day Year

12a Has the Internal Revenue Service granted any minimum funding waiver(s) for this plan?

Yes ☐ No ☐

b If "Yes", attach (1) copies of all waiver ruling letters and (2) a schedule showing the total amount waived for each plan year and the remaining unamortized amount of the waiver.

13a Are there any requests for minimum funding waiver(s) pending before the IRS?

Yes ☐ No ☐

b If "Yes", attach (1) copies of all applications including cover letters and exhibits and (2) a schedule showing for each plan year the pending waiver amount.

14a Are there outstanding employer contributions owed to the plan exclusive of amounts described in 12 and 13?

Yes ☐ No ☐

b If "Yes", attach a schedule showing for each plan year the amount of outstanding employer contributions owed.

PART III. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that, to the best of my knowledge and belief:

- the information contained in this filing is true, correct, and complete; and

- the information provided to the enrolled actuary is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

_____
Plan administrator's name (type or print)

_____ _____
Plan administrator's signature Date

PBGC
U.S. GOVERNMENT AGENCY

Schedule EA-D
(PBGC Form 601)

Distress Termination
Enrolled Actuary Certification

Approved OMB 1212-0036
Expires 06/30/93

DRAFT

Plan Name _____

EIN: ☐☐☐☐☐☐☐☐☐ PN: ☐☐☐

PART I. SUFFICIENCY LEVEL AS OF PROPOSED TERMINATION DATE

1 As of the proposed termination date, is the value of plan assets available to pay for plan benefits, when allocated in accordance with section 4044 of ERISA--

a Less than the value of all benefits guaranteed by the PBGC under section 4022(a) and (b) of ERISA?

Yes ☐ No ☐

b Equal to or greater than the value of guaranteed benefits, but less than the value of benefit liabilities?

Yes ☐ No ☐

c Equal to or greater than the value of benefit liabilities?

Yes ☐ No ☐

If you checked "Yes" in 1a, complete the rest of Part I and complete Part III. Do not complete Part II. If you checked "No" in 1a, complete the rest of Part I, Part II, and Part III.

2 Estimated value of plan assets available to pay for plan benefits, determined as of the proposed termination date:

a Estimated value of plan assets (excluding value of contributions owed to the plan) $_____

b Estimated total contributions owed to the plan $_____

c Estimated collectible value of 2b $_____

d Estimated value of total plan assets (sum of a and c) $_____

3 Estimated value of Title IV benefits as of the proposed termination date $_____

4 Estimated value of all benefit liabilities as of the proposed termination date $_____

PART II. SUFFICIENCY LEVEL AS OF PROPOSED DISTRIBUTION DATE

5 Proposed distribution date

Month Day Year

6 As of the proposed distribution date, do you project that the plan will have sufficient assets available to pay for plan benefits, when allocated in accordance with section 4044 of ERISA, to provide--

a All benefits guaranteed by the PBGC under section 4022(a) and (b) of ERISA, but not benefit liabilities?

Yes ☐ No ☐

b All benefit liabilities?

Yes ☐ No ☐

PART III. ENROLLED ACTUARY CERTIFICATION

I, the Enrolled Actuary, certify that:

- I have reviewed all relevant plan documents, plan and participant data, and the method used to value the plan assets;
- I have applied all relevant provisions of ERISA, the Code, and the regulations promulgated thereunder;
- to the best of my knowledge and belief, the information contained in this schedule is true, correct, and complete; and
- to the best of my knowledge and belief, the plan's assets and benefits have been valued in accordance with Title IV and PBGC regulations; and the value of the plan's assets, when allocated in accordance with the PBGC's regulation on allocation of assets (29 CFR Part 2618), is sufficient (as of the proposed termination date) to provide plan benefits as indicated:

(Check one) ☐ Insufficient for guaranteed benefits ☐ Sufficient for guaranteed benefits but not for benefit liabilities ☐ Sufficient for benefit liabilities

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Enrolled actuary's name (type or print) \ Enrolled actuary identification number

Company

Address (number and street)

City or town State Zip Code Telephone number \ Area code

Enrolled actuary's signature Date

PBGC Form 602

PBGC
U.S. GOVERNMENT AGENCY

Post-Distribution Certification for Distress Termination

Approved OMB 1212-0036
Expires 03/31/93

DRAFT

The plan administrator must file this form with the Pension Benefit Guaranty Corporation no later than 30 days after distribution of assets is completed.

PART I. DISTRIBUTION INFORMATION

1 Plan name _____

2 Employer identification and plan numbers ☐☐☐☐☐☐☐☐☐ ☐☐☐
Enter 9 digit EIN Enter 3 digit PN

3 PBGC Case number _____

4 Date of distribution ☐☐☐
Month Day Year

5 Latest date notices of benefit distribution issued to participants or beneficiaries

☐☐☐
Month Day Year

6a Were some or all of the benefits distributed through the purchase of irrevocable commitments from an insurer?

Yes ☐ No ☐

b If "Yes", were participants and beneficiaries provided with the name and address of the insurer(s) no later than 45 days before the date of distribution?

Yes ☐ No ☐

7a Were you able to locate all participants?

Yes ☐ No ☐

b If "No", were irrevocable commitments purchased or monies deposited, as required?

Yes ☐ No ☐

8a Has a copy of the annuity contract, certificate, or written notice been provided to each participant and beneficiary receiving benefits in the form of irrevocable commitments?

Yes ☐ No ☐ N/A ☐

b If "Yes", enter date, or latest date, annuity contracts, certificates, or written notices were issued to participants and beneficiaries:

☐☐☐
Month Day Year

8 Name and address of insurer(s), if any, from whom annuity contracts have been purchased

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code

Annuity contract number(s) _____

Name _____

Address _____ (number and street)

City or town _____ State _____ Zip Code

Annuity contract number(s) _____

9 Location of plan records

Name

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

10 Summary of distribution of benefit liabilities

	Form	Number Of Participants/Beneficiaries	Total Value
a	Annuities		$
b	Lump sums (other than rollovers)		
	-- consensual		$
	-- nonconsensual		$
c	Rollovers		$
d	No distribution		$
e	TOTAL		$

PART II. PLAN ADMINISTRATOR CERTIFICATION

I, the Plan Administrator, certify that

- I have made a reasonable effort to locate all participants;
- to the best of my knowledge and belief, benefits payable with respect to participants have been calculated and valued correctly in accordance with applicable provisions of ERISA and the regulations thereunder;
- to the best of my knowledge and belief, all (check one) ☐ guaranteed benefits OR ☐ benefit liabilities under the plan have been satisfied;
- to the best of my knowledge and belief, the information contained in this filing is true, correct, and complete; and
- I am aware that records supporting the calculation and valuation of benefits and assets must be kept at least six years after the date this post-distribution certification is filed.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name of plan administrator (type or print)

Company

Address (number and street)

City or town State Zip Code Telephone number ( ) Area code

Plan administrator's signature Date

[FR Doc. 92–30059 Filed 12–11–92; 8:45 am]
BILLING CODE 7708–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31571; File No. SR–CBOE–92–19]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to OEX RAES Eligibility Standards

December 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the eligibility standards under which individuals, member organizations and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES" or "System") for Standard & Poor's ("S&P") 100 Index ("OEX") options, and to include the revised eligibility standards in the Exchange's rules as CBOE Rule 24.17, "RAES Eligibility in OEX." [1] The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The current RAES eligibility standards were approved by the Commission in Securities Exchange Act Release No. 27378 (October 24, 1989), 54 FR 27378 (order approving File No. SR–CBOE–87–22).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to amend the eligibility standards under which individuals, member organizations and joint accounts may participate in RAES for OEX options, and to include the revised eligibility standards in the Exchange's rules as CBOE Rule 24.17, "RAES Eligibility in OEX." The CBOE states that the proposed amendments reflect changes in the marketplace, as well as the Exchange's experience to date with the existing eligibility standards. The Exchange explains that the purpose of the proposed rule change is to promote (1) greater depth and liquidity in OEX options markets, and (2) more equitable participation in RAES by active Market-Makers in the OEX crowd.

Specifically, with regard to an individual Market-Maker's eligibility to participate in RAES, the proposal provides that: (1) The Exchange will consider a Market-Maker's OEX trades for the preceding month, rather than reviewing his OEX and S&P 500 Index ("SPX") trades for the preceding quarter; (2) a Market-Maker must execute at least 75% of his Market-Maker contracts for the preceding month in OEX; and (3) a Market-Maker must execute at least 75% of his trades for the preceding month in person.[2] In addition, the proposal requires individuals logged onto RAES to log off the System when they leave the trading crowd; failure to log off RAES after leaving the trading crowd will result in a fine of $500.00, imposed by the OEX Floor Procedures Committee ("OFPC").

For joint accounts, the proposal allows the manager of a joint account to log onto RAES all eligible account members present in the OEX trading crowd. In addition, the proposal provides that (1) members of a joint account who are not present in the OEX trading crowd may not be logged onto RAES; (2) a joint account member must log off RAES whenever he leaves the OEX trading crowd; and (3) once a member of a joint account has been logged onto OEX RAES at any time during an expiration cycle, each member of that account must be logged onto the System at any time that he enters the OEX trading crowd from the date of the initial log-on through the business day immediately preceding expiration. The proposed rule change mandates a fine of $500.00 per joint account member, imposed by the OFPC, for violations of the preceding requirements. In addition, a joint account member who fails to log onto the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

The CBOE proposes similar rules for members with multiple nominees. Specifically, the proposal allows the manager of a multiple nominee account to log onto RAES all eligible nominees present in the OEX trading crowd. In addition, the proposal provides that: (1) Nominees not present in the OEX trading crowd may not be logged onto RAES; (2) a participating nominee must log off the System when he leaves the OEX trading crowd; and (3) once a participating nominee has been logged onto OEX RAES at any time during an expiration cycle, each participating nominee of the member organization must be logged onto the System at any time that he enters the OEX trading crowd from the date of the initial log-on through the business day immediately preceding expiration. The proposal mandates a fine, imposed by the OFPC, of $500.00 per member for violations of the preceding requirements. In addition, a participating nominee who fails to log into the System on the last business day immediately preceding expiration will be disqualified from signing onto OEX RAES for a period of time to be determined by the OFPC.

Finally, the proposed rule change would authorize the chairperson of the OFPC, or his or her designee, in consultation with a senior Exchange executive officer, to require Market-Makers who are member of the OEX trading crowd to log onto RAES if there appears to be inadequate RAES participation.

By increasing the in-person and OEX volume quotas, decreasing the length of the review period, and restricting RAES participation to members that are present in the trading crowd, the Exchange seeks to achieve several objectives. First, the CBOE believes that the proposed criteria promote greater in-percent participation in the OEX trading crowd and, concomitantly, greater liquidity and depth in OEX options markets. The Exchange anticipates that participating Market-Makers generally will trade out of their RAES positions, thereby creating greater liquidity and tighter bid-ask spreads, even in less active series. The CBOE believes that

[2] Currently, to participate in RAES, a Market-Maker must execute 50% of his Market-Maker contracts for the preceding month in OEX or SPX and must execute 25% of his Market-Maker trades for the preceding month in person in OEX or SPX.

the mandatory presence of RAES participants in the trading crowd will also promote greater accountability and is consistent with the current standard for participation in RAES and SPX and in equity options.

In addition, the proposed eligibility criteria are designed to promote more equitable participation in RAES by those OEX Market-Makers that regularly assume the responsibility for making markets in OEX. Under the existing standards, Market-Makers that are neither present in the trading crowd nor active Market-Makers in OEX options may, nevertheless, participate in OEX RAES. This expansive pool of eligible Market-Makers deprives active in-crowd Market-Makers of the opportunity to participate proportionately in the customer order flow routed thought RAES. Under the revised standards, Market-Makers that do not assume a significant responsibility for making markets in the OEX crowd will be precluded from taking the other side of RAES-executed customer orders.

The Exchange does not believe that the potential reduction in the number of Market-Makers eligible to participate in RAES will adversely affect the efficient functioning of the RAES system. Of the more than 280 Market-Makers currently logged onto RAES on an average day, approximately 210 would remain eligible under the proposed rule change. The CBOE states that in the past this has proven to be more than adequate to ensure the continued smooth operation of OEX RAES. In addition, the CBOE believes that the mandatory log-on provisions should ensure that there is adequate participation throughout the expiration cycle and, in particular, on expiration Fridays.

Moreover, the CBOE believes that the proposal enhances those safeguards currently in place to ensure sufficient Market-Maker participation on OEX RAES during periods of market volatility. Specifically, as noted above, if there appears to be inadequate RAES participation in OEX, the proposed rule change would enable the chairman of the OFPC or his designee, in consultation with a senior executive Exchange officer, to require members of the OEX trading crowd to participate in RAES, regardless of eligibility, and to request participation by members outside of the OEX trading crowd. Currently, the entire OFPC must make this determination. In addition, the separate sanctions previously imposed, respectively, against individual Market-Makers and group participants for failure to comply with the OEX RAES rules and standards have been made co-extensive. Accordingly, any participant that fails to satisfy his long-on requirement on the last business day preceding expiration will be disqualified from signing onto the system for a period of time to be determined by the OFPC. Likewise, any participant that fails to abide by the long-on and long-off requirements set forth in the proposal will be subject to a free in the amount of $500.00.

The CBOE explains that the amendments also reflect several administrative changes that have been implemented since the institution of the existing eligibility standards. First, only the manager of a group account, rather than each member of the account, is required to complete the RAES instructional program for purposes of satisfying the eligibility criteria. Likewise, the group manager has been authorized to log onto RAES all account members present in the OEX trading crowd. In addition, the revisions reflect the fact that the OFPC has assumed the enforcement responsibilities previously held by the Index Floor Procedure Committee. The format of the rule has also been amended to make it more consistent with other rules of the Exchange.

The Exchange will provide those Market-Makers currently eligible to participate on RAES with a 60-day grace period following the effective date of the rule change to satisfy the new eligibility criteria if they desire to continue their participation in OEX RAES. The Exchange believes that this will alleviate any unnecessary burden on participating Market-Makers and public customers.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to increase market depth and liquidity and to provide an efficient and fair system for the accommodation of customer transactions on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30203 Filed 12-11-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31570; International Series No. 506; File No. SR–CBOE–92–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Expiration Cycle for Options on the Financial Times-Stock Exchange 100 Index

December 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 2, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the CBOE lists options on a reduced value Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index") on a March quarterly cycle of expiration months.[1] Exchange Rule 24.9(b) authorizes the CBOE to list up to six expiration months for index options; the options may expire at three-month intervals or in consecutive months. Pursuant to Exchange Rule 24.9(b) and the FT–SE Approval Order, the CBOE proposes to amend the pattern of expiration months for the Index options by increasing the number of expiration months from four to six. Specifically, the Exchange proposes to add two near-term months to the March quarterly cycle.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to Exchange Rule 24.9(b) and the FT–SE Approval Order,[2] the CBOE proposes to amend the pattern of expiration months for the Index options by increasing the number of expiration months from four to six. Specifically, the Exchange proposes to add two near-term months to the March quarterly cycle. Accordingly, the proposal will enable the Exchange to list series of reduced-value Index options with up to six different expiration months at any one time (*i.e.*, the three consecutive near-term months and the three farther out months in the March quarterly cycle. Under this pattern, for example, in January the Exchange may list series of reduced value Index options that expire in each of the three consecutive near-term months, namely January, February, and March, and in the three far out months of the March quarterly expiration cycle, namely, June, September, and December.

At no time will there be more than six expiration months in this class of options, exclusive of long-term options listed pursuant to Exchange Rule 24.9(d). Likewise, at no time will the Exchange list a series of reduced value Index options that expires more than twelve months from the date the series is listed, again with the exception of long-term options listed pursuant to Exchange Rule 24.9(d).

The purpose of the proposal is to provide the CBOE with the flexibility to list series of reduced value Index options expiring in each of the three near-term months in addition to the three further out months in the March quarterly expiration cycle. This will enable the Exchange to list reduced value Index options having the same pattern of expiration months that apply to Index options and options on futures on the Index traded on the London International Financial Futures and Options Exchange and the Chicago Mercantile Exchange, respectively. In addition, the amended pattern of expiration months is consistent with the pattern currently applicable for Exchange-listed options on the Standard & Poor's 500 Index.

The CBOE notes that the proposed change in the pattern of expiration months was expressly contemplated in the original FT–SE Approval Order.[3] In addition, the CBOE notes that the proposal is consistent with Exchange Rule 24.9(b), which contemplates as many as six expiration months, in three-month intervals or consecutive months.

The CBOE believes that the proposal is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing CBOE rule. The Commission notes that the CBOE's rules provide the Exchange with some discretion to add additional expiration months, and that the proposal is consistent with the procedures for changing the pattern of expiration months previously approved by the Commission.[4] Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent

[1] See Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49807 ("FT–SE Approval Order").

[2] See note 1, *supra*.

[3] See note 1, *supra*.

[4] See Securities Exchange Act Release No. 23257 (May 20, 1986), 51 FR 19434 (order approving File Nos. SR–CBOE–86–02 and SR–CBOE–86–04).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30204 Filed 12–11–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31566; International Series Release No. 504; File No. SR–OCC–92–29]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Delivery-Versus-Payment Settlement Procedures

December 4, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 17, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–92–29) as described in Items I, II, and III below, which Items have been prepared primarily by OCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend chapter XVI, Rule 1606A, of its Rules to modify the delivery-versus-payment ("DVP") settlement procedures: (1) To provide that a Clearing Member is not discharged from its obligation to pay U.S. dollars or to deliver foreign currency in settlement of an exercise of foreign currency options until the earlier of (i) the time when its agent bank makes final settlement or (ii) the time when OCC's correspondent bank irrevocably credits OCC's account with the U.S. dollars or foreign currency deliverable by the Clearing Member's agent bank; (2) to emphasize that OCC is obligated in the DVP settlement processes to cause its correspondent bank to make settlement only against receipt of the agent bank's counter-settlement; and (3) to clarify that OCC's obligation to make payment or delivery is to the party designated by the Clearing Member's agent bank in the DVP Authorization, which may or may not be the agent bank.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to chapter XVI, Rule 1606A of OCC's Rules has three purposes. First, the proposal will clarify that a Clearing Member that elects to settle via DVP procedures permitted by Rule 1606A is not discharged from its obligation to pay U.S. dollars or to deliver foreign currency in settlement of an exercise of foreign currency options until the earlier of (i) the time when its agent bank makes final settlement or (ii) the time when OCC's correspondent bank irrevocably credits OCC's account with the U.S. dollars or foreign currency deliverable by the Clearing Member's agent bank. Secondly, the proposal will emphasize the conditional nature of OCC's obligation in the DVP settlement process. OCC is obligated to cause its correspondent bank to make settlement only against receipt of the agent bank's counter-settlement. Finally, the proposal will clarify that OCC's obligation to make payment or delivery is to the party designated by the Clearing Member's agent bank in the DVP authorization, which may or may not be the agent bank.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act[2] because it conforms the allocation of the settlement risk in the DVP process to that of the regular way settlement process and avoids a situation where OCC would be obligated to release margin or deliver currency to a Clearing Member whose agent bank has failed to settle with OCC's correspondent bank.

B. SRO's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should

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[5] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

refer to File No. SR–OCC–92–29 and should be submitted by January 5, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30205 Filed 12–11–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19147; File No. 812–7911]

Anchor National Life Insurance Company, et al.

December 4, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Anchor National Life Insurance Company ("Anchor National"), Variable Separate Account (the "Separate Account"), SunAmerica Securities, Inc. ("SunAmerica") and Royal Alliance Associates, Inc. ("Royal Alliance").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge and a distribution expense charge from the assets of the Separate Account under certain individual and group flexible payment deferred annuity contracts ("Contracts").

FILING DATE: The application was filed on April 28, 1992 and amended on October 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Routier, Mackey and Johnson, 1700 K Street, NW., suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Anchor National is a stock life insurance company organized under the laws of the State of California.

2. The Separate Account was established by Anchor National to fund variable annuity contracts and is registered as a unit investment trust under the 1940 Act.

3. SunAmerica and Royal Alliance, broker-dealers registered under the Securities Exchange Act of 1934, are the principal underwriters for the securities issued by the Separate Account.

4. The Contracts provide for the accumulation of contract values and the payment of annuity benefits on a variable or a fixed basis. Purchase payments may be allocated to portfolios of the Separate Account or to the general account of Anchor National under one of the Contract's fixed options (the "Fixed Account"), or to a combination thereof. The minimum initial purchase payment for a Contract issued to fund a retirement plan that qualifies for special federal tax advantages ("Qualified Contracts") is $2,000; the minimum initial payment for a Contract that does not qualify for federal tax advantages ("Non-Qualified Contracts") is $5,000. Additional payments may be made in the amount of $250 for Qualified Contracts and $500 for Non-Qualified Contracts.

5. Anchor Series Trust ("Anchor Trust") and SunAmerica Trust ("SunAmerica Trust") are diversified, open-end management investment companies registered under the 1940 Act. Each portfolio of the Separate Account invests Contract payments in one of six series of Anchor Trust or one of ten series of SunAmerica Trust. Additional underlying funds may be available in the future.

6. If a Contract owner or participant dies during the accumulation period, a death benefit is paid to the beneficiary under the Contract. The standard death benefit is the greater of (1) the Contract value at the end of the valuation period during which due proof of death is received by Anchor National and (2) the amount of purchase payments less the sum of partial withdrawals, partial annuitizations and premium taxes incurred.

7. An enhanced death benefit also is provided where permitted by state law. During the first seven Contract years, the enhanced death benefit is determined by recomputing the standard death benefit by accumulating all amounts under (2) in paragraph 6 at 4% annually (or 3% if the Contract owner or participant was age 70 or older on the date of issue) to the date of death. After the seventh Contract year, the enhanced death benefit is the greater of the amount recomputed during the first seven Contract years, or the Contract value at the seventh Contract anniversary less the sum of partial withdrawals, partial annuitizations since the seventh anniversary and premium taxes incurred since the seventh anniversary, all accumulated at 4% annually (or 3% annually if the Contract owner or participant was age 70 or older on the date of issue) to the date of death.

8. During the accumulation period, amounts allocated to the Separate Account may be transferred among the portfolios and/or the Fixed Account. Any amounts allocated or transferred to the Fixed Account may, however, be transferred from the Fixed Account to the Separate Account only on or before seven calendar days prior to the annuity date. There is no charge for the first fifteen transfers in any Contract year. A transfer fee of $25 ($10 in Texas and Pennsylvania) is assessed for the sixteenth and each subsequent transfer in any Contract year.

9. A contingent deferred sales charge ("Withdrawal Charge") may be imposed on certain withdrawals. Withdrawal Charges will vary in amount depending upon the contribution year of the purchase payment at the time of withdrawal, in accordance with the following table:

WITHDRAWAL CHARGE TABLE

Contribution year	Applicable withdrawal charge (percent)
Zero	7
First	6
Second	5
Third	4
Fourth	3
Fifth	2
Sixth	1
Seventh and later	0

[3] 17 CFR 200.30–3(a)(23) (1991)

Withdrawals are allocated first to investment income, if any (which generally may be withdrawn free of Withdrawal Charge), and then to purchase payments on a first-in, first-out basis so that all withdrawals are allocated to purchase payments to which the lowest Withdrawal Charge applies.

There is a free withdrawal amount for the first withdrawal during a Contract year after the first Contract year. The free withdrawal amount is equal to the sum of (1) purchase payments that are no longer subject to the Withdrawal Charge and that have not previously been withdrawn, and (2) the greater of (A) 10% of purchase payments made more than one year prior to the date of withdrawal that remain subject to the withdrawal charge and that have not previously been withdrawn, or (B) earnings in the Contract owner's or participant's account. Amounts in excess of earnings that are withdrawn free of the Withdrawal Charge pursuant to the 10% free withdrawal provision are charged against future earnings for purposes of determining the Withdrawal Charge; that is, they reduce the amount of future earnings that can be withdrawn free of Withdrawal Charge.[1]

10. Anchor National deducts a distribution expense charge from each portfolio of the Separate Account during each valuation period on an annual basis of 0.15% of the net asset value of each portfolio. The distribution expense charge is designed to compensate Anchor National for assuming the risk that the cost of distributing the Contracts will exceed the revenues from the Withdrawal Charge. In no event will this charge be increased. The distribution expense charge is assessed during both the accumulation period and the annuity period but not applied to Contract values allocated to the Fixed Account.

11. An annual Contract administration charge of $35 is charged against each Contract. The amount of this charge is guaranteed and cannot be increased. The administrative charge is at cost with no anticipation of profit.

12. Anchor National imposes a charge for bearing certain mortality and expense risks under the Contract. The total annual mortality and expense risk charge is 1.37% of the net asset value of each portfolio of the Separate Account during each valuation period.

(a) The mortality risk portion of the charge is at an annual rate of 1.02%, of which 0.90% is assessed for providing the standard death benefit and 0.12% is assessed for providing the enhanced death benefit. The mortality risk charge is deducted to compensate Anchor National for assuming the risks that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates, for waiving the withdrawal charge in the event of the death of the Contract owner or participant, and for providing standard and enhanced death benefits prior to the annuity date. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, Anchor National will bear the loss; however, if the charge proves more than sufficient, the excess will be a gain to Anchor National. The mortality risk charge may not be increased under the Contract.

(b) The expense risk portion of the charge is at the annual rate of 0.35% of the net asset value of each portfolio. The expense risk charge is to compensate Anchor National for assuming the risk that the Contract administration charge will be insufficient to cover the cost of administering the Contracts. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, Anchor National will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to Anchor National. The expense risk charge may not be increased under the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deductions of the mortality and expense risk charge and a distribution expense charge from the assets of the Separate Account under the Contracts.

2. Applicants represent that the mortality and expense risk charge of 1.25% (which does not include the 0.12% risk charge for the enhanced death benefit) is reasonable in relation to the risks assumed by Anchor National under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants represent that these determinations are based on their analysis of publicly available information about similar industry practices and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Anchor National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

3. Applicants represent that the mortality risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by Anchor National under the Contracts. In arriving at this determination, Anchor National ran a large number of computer-generated trials at various issue ages to determine the expected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical Contract owner's or participant's death during the year in question. By analyzing the results of several thousand such simulations, Anchor National was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, Anchor National determined that a mortality risk charge of 0.12% was a reasonable charge for the enhanced death benefit. Anchor National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by Anchor National under the Contracts.

4. Anchor National represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the 1940 Act. Anchor National has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. Anchor National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

5. Applicants represent that the amount of any Withdrawal Charge imposed when added to any distribution expense charge previously

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect these representations.

paid, will not exceed 9% of purchase payments and that Anchor National will monitor each Contract owner's and participant's account for the purpose of ensuring that this limitation is not exceeded. Applicants undertake to include in the prospectus for the Contracts statements describing the purpose of the distribution expense charge, and that the staff of the Commission deems such charge to constitute a deferred sales charge.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charges and the distribution expense charge from the assets of the Separate Account under the Contracts meets the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30206 Filed 12–11–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19148; File No. 812–7511]

Golden American Life Insurance Company, et al.

December 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Golden American Life Insurance Company ("Golden American"), Golden American Separate Account D of Golden American Life Insurance Company ("the Account") and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from sections 2(a)(35), 12(b), 26(a)(2)(C) and 27(c)(2), and Rule 12b–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit deduction of a mortality and expense risk charge from the assets of the Account under deferred variable annuity contracts (the "Deferred Annuity Contracts") and variable annuity certain contracts (the "Annuity Certain Contracts"), the deduction of a premium-based sales charge from the accumulation value and the deduction of a guaranteed death benefit charge under the Deferred Annuity Contract.

FILING DATE: The Application was filed on April 20, 1990 and amended on October 30, 1990, July 10, 1991, March 20, 1992 and August 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Golden American Life Insurance Company, 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Senior Attorney, at (202) 272–2058 or Wendell Faria, Deputy Chief, Office of Insurance Products, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Golden American Life Insurance Company is a stock life insurance company organized under the laws of the State of Minnesota. From January 2, 1973 through December 31, 1987, the name of the company was St. Paul Life Insurance Company. On December 31, 1987, after the sale of St. Paul Life Insurance Company's business, the name was changed to Golden American Life Insurance Company. On March 7, 1988, all of the stock of Golden American was acquired by The Golden Financial Group, Inc. ("GFG"), a financial services holding company. On October 19, 1990, GFG merged with and into MBL Variable, Inc. ("MBLV"), a wholly owned direct subsidiary of the Mutual Benefit Life Insurance Company ("MBL"). On January 1, 1991 MBLV became a wholly owned indirect subsidiary of MBL and Golden American became a wholly owned direct subsidiary of MBL.

In September 1992, Bankers Trust Company ("Bankers Trust"), a New York banking corporation, acquired Golden American and DSI. As of June 30, 1992, Bankers Trust New York Corp., parent of Bankers Trust, was the eighth largest bank holding company in the United States with total assets of approximately $64 billion. Bankers Trust conducts a variety of general banking and trust activities and is a wholesale supplier of financial services to the domestic and international market.

2. The Account, registered with the Commission as a managed separate account on Form N–3, is a separate investment account of Golden American established on April 18, 1990 to act as a funding vehicle for variable annuity contracts. The Account consists of the U.S. Government Bond Division (the "Division") and the Global Asset Allocation Portfolio ("Portfolio") (collectively the "Divisions"). The Division's investment objective is to achieve high total investment return consistent with a prudent regard for capital preservation. Currently, only Deferred Annuity Contracts are funded by the Divisions. Other Divisions may be added in the future.

3. On July 16, 1991, the Superior Court of New Jersey entered an order (the "Order") appointing the Commissioner of Insurance of the State of New Jersey as Rehabilitator of MBL. The Order granted the Rehabilitator immediate exclusive possession and control of, and title to, the business and all assets of MBL. The Rehabilitator has been directed to conduct the business of MBL and to begin taking such steps as he may deem appropriate toward removing the causes and conditions which have made rehabilitation necessary.

Golden American is not subject to rehabilitation under the Order. However, to protect Golden American and its Contract Owners, on July 16, 1991 a Minnesota Superior Court ordered that Golden American temporarily be placed under the supervision of the Minnesota Commissioner of Commerce and that various actions, including certain transfers of company assets, cannot be taken without the prior written consent of the Commissioner of Commerce. Golden American is permitted to accept new premiums, pay all claims and benefits and honor all requests for cash withdrawals and surrenders.

4. As previously noted, DSI will serve as the Manager to the Account. Granite Financial Services, Inc. will serve as the

Portfolio Manager to the Division and Zulauf Asset Management AG will serve as the Portfolio Manager to the Portfolio. Pursuant to a distribution agreement between Golden American and DSI, DSI will act as the principal underwriter and distributor of the Contracts and will enter into sales agreements with broker-dealers to solicit sales of the Contracts through registered representatives. The offering of the Contracts will be continuous.

5. The Contracts are currently intended to be used in connection with either a retirement plan qualified under sections 401(a), 408(a), 408(b) and 457 of the Internal Revenue Code or a non-qualified plan, or by any other purchaser for whom they may provide a suitable investment.

6. The Deferred Annuity is an individual flexible premium payment contract which provides of an initial premium payment and for subsequent premium payments if the Contract owner so desires. There is, however, no obligation to make additional payments.

7. The Annuity Certain is an immediate annuity which provides for payment of a single premium and allows for variable annuity payments to be made to the Annuitant over a fixed period of time.

8. The sales charges imposed under the Contracts may be structured in one of two ways, as described in (a) and (b) below. If Contracts are sold with both types of sales load structures a separate sub-division of the Divisions will be established to hold assets attributable to Contracts with each type of sales load.

a. Certain Contracts may provide for deferred loading at a maximum rate of 7.5% of each payment. Initially, the deferred load for the Deferred Annuity Contracts investing in the Division will be 3.00% and 6.00% for Deferred Annuity Contracts investing in the Portfolio. For both the Deferred Annuity Contracts and the Annuity Certain Contracts, the deferred loading may differ based on the size of the initial or single premium. For the Deferred Annuity Contracts, the deferred loading percentage is applicable to all subsequent premium payments and may not be modified. All deferred loading applicable to initial or additional premium payments or single premium payments is deducted by Golden American at the time of payment but is advanced back to the Divisions and recovered periodically in equal installments over a period specified in the Contracts by Golden American from the accumulation value following receipt and acceptance of the payment. If the Contract Owner surrenders a Contract, any remaining deferred loading will be recovered by Golden American at that time, and a portion of the remaining deferred loading will be immediately deducted from the accumulation value for partial withdrawals in excess of 15% of accumulation value. For purposes of the provisions of the 1940 Act applicable to sales loads, the deferred loading is a front-end sales load.

b. In the future, certain Contracts may provide for a combination of a premium-based sales load and a contingent deferred sales load in lieu of the deferred load. Golden American will deduct the premium-based sales load from accumulation value in an amount equal to a maximum of 7.50% of each premium payment. The premium-based charge will be deducted in equal installments for a period of up to ten years or until such time as the Contract Owner surrenders the Contract or annuitizes. A contingent deferred sales load may be deducted if a Contract Owner surrenders a Contract or makes a partial withdrawal thereunder in excess of 15% of accumulation value. The contingent deferred sales load upon surrender will be a maximum of 7.50% in Contract year one and will decline to zero for surrenders after Contract year eight. In no event will the sum of the premium-based sales load and any contingent deferred sales load exceed 9.00% of each premium payment.

9. Generally, premium taxes are incurred on the annuity commencement date, and a charge for premium taxes is then deducted from the accumulation value of such date. Currently, these charges range from 0% to 3.5%. Some jurisdictions impose a premium tax at the time the initial or additional premiums are paid, regardless of the annuity commencement date. In those states, Golden American advances the amount of the premium tax charge to the accumulation value and then deducts it in equal installments on each Contract processing date over a six-year period. Currently in those states where Golden American advances the charge for premium taxes, Golden American will waive the deduction of the applicable installments on each contract processing date. However, Golden American deducts the applicable unrecovered portion of the charge for premium taxes (not including installments which were waived) when determining the cash surrender value payable if the Contract Owner surrenders the Contract. Golden American reserves the right to deduct the total amount of the charge for premium taxes previously waived and unrecovered on the annuity commencement date.

10. Under the Contracts, Golden American in the future may impose an administrative charge of $40 annually which will be deducted in equal installments from the accumulation value of a Contract to reimburse Golden American for the anticipated actual cost of administrative expenses relating to the Contracts. The amount of the charge may be changed by Golden American but is guaranteed not to exceed $60 annually. There may also be an asset-based administrative charge accrued daily at a rate of 0.00276%, not to exceed 0.10% annually of the assets of the Contracts. This administrative charge, if assessed under the Contracts, would remain in effect for the life of the Contracts.

11. The Contracts provide that a maximum mortality and expense risk daily charge equal to the rate of 0.003445% (equivalent to an annual charge of 1.25%) of the asset values in each division of the Account will be deducted. The mortality risk assumed by Golden American arises from its obligation to continue to make annuity payments under the income plan provisions of the Contracts, determined in accordance with the guaranteed annuity tables and other provisions of the Contract, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than Golden American's actuarial projections indicated, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables set forth in the Deferred Annuity. In the Deferred Annuity Contract, Golden American also assumes a risk that it may be required to pay out a guaranteed death benefit if in excess of the accumulation value. The mortality risk assumed by Golden American under the Annuity Certain is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Golden American's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables set forth in the Annuity Certain. In addition, Golden American assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

12. With respect to the Deferred Annuity, Golden American guarantees a death benefit payable to the beneficiary

if the Contract Owner or annuitant (when there is no contingent annuitant) dies prior to the annuity commencement date. Currently, Golden American will not impose a charge for its guarantee of a minimum death benefit under the Deferred Annuity. In connection with Contracts that invest in the U.S. Government Bond Division, Golden American pays the lesser of the guaranteed death benefit and the maximum guaranteed death benefit. The guaranteed death benefit is the accumulated value of the premium paid adjusted at a specified annual interest rate of up to 8.00% minus the accumulated value of the partial withdrawals (when available) adjusted at a specified annual interest rate of up to 8.00%. In connection with Contracts that invest in the Portfolio, when the annuitant and owner are both age 80 or younger at issue, Golden American pays the greater of the guaranteed death benefit and the accumulation value of the premium paid adjusted at a specified annual interest rate of up to 7.00% minus the accumulation value of any partial withdrawals (when available) adjusted at a specified annual interest rate of up to 7.00%. If the annuitant or owner is 81 years or older at issue, the death benefit is the greater of the cash surrender value and the sum of premiums paid less any partial withdrawals. Golden American reserves the right to modify this interest rate structure with newly issued Contracts. The maximum guaranteed death benefit is two times the sum of premiums paid minus the sum of partial withdrawals taken. Golden American may impose, in the future, a charge for its guarantee of a minimum death benefit ("Guaranteed Death Benefit Charge"). This charge will not be an asset based charge, but will be an account charge imposed to compensate Golden American for the risk that the guaranteed death benefit due under a Deferred Annuity Contract when the annuitant dies during the accumulation phase may exceed the normal death benefit otherwise payable. In the Deferred Annuity Contract, the guaranteed death benefit charge, if assessed, will be at a rate of $1.20 per $1,000 of guaranteed death benefit per year. All guaranteed death benefit charges will be deducted in equal installments on the contract processing date. The guaranteed death benefit in effect on the previous processing date will be multiplied by the annual rate and divided by the number of processing dates in each contract year to determine the actual charge. As an asset charge (assuming a hypothetical gross return of 5%), it would effectively increase the mortality and expense risk charge by approximately 0.10%. For higher hypothetical gross returns, this charge, when expressed as an asset charge, would be less; and, for lower hypothetical gross returns, it would be more. Assessment of the charge in this manner would benefit Contract Owners because it provides a better match of the charge and the risk than assessing the charge as a daily percentage of assets charged against assets in a division of the Account.

Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from the provisions of the 1940 Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. To the extent any relief is necessary to permit the deduction from the Account of the mortality and expense risk charge and, from the accumulation value of the Contracts, the guaranteed death benefit charge, Applicants request an exemption from sections 12(b), 26(a)(c) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder.

3. To the extent that a guaranteed death benefit charge (as described immediately below) is imposed with respect to a particular Deferred Annuity Contract, the mortality and expense risk charge will be limited to a level such that the sum of the mortality and expense risk charge and an asset based approximation of the guaranteed death benefit charge (assuming a 5% rate of return) does not exceed 1.25% of the assets in the division of the Account.

4. If the charges are insufficient to cover the actual cost of the mortality and expense risk and guaranteed death benefit costs, the loss will fall on Golden American; conversely, if the deduction proves more than sufficient, the excess will be a profit to Golden American. Any profits resulting to Golden American from the mortality and expense risk and guaranteed death benefit charges can be used by Golden American, at its discretion, for any business purpose, including distribution expenses relating to the Contracts.

5. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk charge under comparable variably annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants further represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

6. Applicants do not believe that the sales loads imposed under the Contracts will necessarily cover the expected costs of distributing Contracts. Any "shortfall" will be made up from the general account assets which will include amounts derived from risk charges. Golden American has concluded that there is a reasonable likelihood that the distribution financing arrangement that will be used in connection with the Contracts will benefit the Account and the Contract Owners. Golden American will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

7. Applicants further represent that the Account will have a Board of Governors, a majority of whom are not interested persons of the Account, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

8. As described above, the Contracts may in the future provide for the deduction from accumulation value of an amount equal, on an annual basis, to a maximum of 7.50% of each premium payment as a premium-based sales load. In no event will the sum of any premium-based sales load and any contingent deferred sales load assessed under a Contract exceed 9.00% of each premium payment. Applicants request an exemption from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit this deduction from accumulation value in installments.

9. Section 2(a)(35) of the 1940 Act defines sales load as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

10. The literal language of section 2(a)(35) contemplates that any sales load imposed on a security of a registered

investment company be a front-end load. Rule 6c–8 specifically allows the deduction of contingent deferred sales loads with respect to a variable annuity contract, if certain conditions are fulfilled, all of which are met with the Contracts. Applicants argue that the deduction of the premium-based sales load from accumulation value could be viewed as an impermissible deduction from the accumulation value in the Account. Accordingly, Applicants request relief from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of the premium-based sales load.

11. Applicants submit that imposition of a sales charge in the form of a premium-based charge to be deducted from accumulation value is more favorable to a Contract Owner than the deduction of this charge from premiums paid. Specifically, the amount of the Contract Owner's investment in the Account is not reduced as it would be if these charges were taken in full directly from premiums paid. Second, the total amount charged to any Contract Owner is no greater than it would be if these charges were taken from premiums paid. Finally, the fact that the entire amount of the charge has not been deducted will favorably affect the amount of the Guaranteed Death Benefit.

Conclusion

In light of the foregoing facts and representations, Applicants believe that the requested exemptions to deduct the mortality and expense risk, guaranteed death benefit charges and premium-based sales charge under the Contracts is necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30207 Filed 12–11–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 4, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48507
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: Telex TC23 Mail Vote 600; Japan-Egypt/Israel/Jordan PEX fares, r–1; Telex TC2 Mail Vote 601; Within Africa fares, r–2
Proposed Effective Date: January 1/ April 1, 1993

Docket Number: 48508
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P0514 dated November 27, 1992; Expedited TC3 Resos (except UST); r–1–002h, r–2–003z; TC3 Reso/P0515 dated November 27, 1992; Expedited TC3 Resos (except UST); r–3–003a, r–4–003i, r–5–003k, r–6–003n, r–7–003o, r–8–003p
Proposed Effective Date: Expedited January 1/January 4, 1993

Docket Number: 48509
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P0513 dated November 27, 1992; Expedited TC3 Reso (US Territories); r–1–002b; TC3 Reso/P0516 dated November 27, 1992; Expedited TC3 Reso (US Territories), r–2–003M
Proposed Effective Date: Expedited January 1/January 4, 1993

Docket Number: 48510
Date filed: November 30, 1992
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0542 dated October 6, 1992; Europe-South Asian Subcontinent Resos r–1 to r–18
Proposed Effective Date: January 1, 1993

Docket Number: 48518
Date filed: December 2, 1992
Parties: Members of the International Air Transport Association
Subject: Request for Interim Approval of Amendments to the Provisions for The Conduct of The IATA Traffic Conferences
Proposed Effective Date: Upon Governmental Approval

Docket Number: 48519
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: Telex TC12 Mail Vote 604; Mid Atlantic-Africa fares
Proposed Effective Date: April 1, 1993

Docket Number: 48520
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1331 dated November 17, 1992; Middle East-Africa Expedited resos r–1 to r–5; TC2 Reso/P 1333 dated November 17, 1992; Within Africa Expedited resos r–6 to r–11
Proposed Effective Date: Expedited January 1, 1993

Docket Number: 48521
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: CAC/Reso/173 dated November 25, 1992; Expedited Resolutions (15th CAC meeting); r–1–801g, r–2–801r, r–3–851, r–4–851p
Proposed Effective Date: January 1, 1993

Docket Number: 48522
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 0960 dated November 27, 1992; North & Central Pacific Expedited Reso 015b
Proposed Effective Date: Expedited March 1, 1993

Docket Number: 48523
Date filed: December 3, 1992
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 0951 dated October 27, 1992; Circle Pacific Resos 002 (r–1) & 073c (r–2); TC31 Reso/P 0971 dated November 27, 1992; Circle Pacific Reso 073c (r–3); Minutes—TC31 Meet/P 0210 dated November 27, 1992; Tables—TC31 Fares 0134 dated November 20, 1992
Proposed Effective Date: April 1/May 1, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–30262 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 4, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48514

Date filed: December 1, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1992
Desciption: Application of Promech, Inc., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefine term to perform scheduled, interstate air transportation of persons, property and mail between the terminal points of Ketchikan and Metlakatla, Alaska.

Docket Number: 48525
Date filed: December 4, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 4, 1993
Descriptions: Application of Lines Aereas Privadas Argentinas, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to enable it to engage in charter foreign air transportation of passengers, property and mail from a point or points in Argentina to a point in the United States and return.

Docket Number: 45723
Date filed: December 4, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 4, 1993
Description: Application of Transports Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit, to engage in the scheduled air transportation of persons, property and mail on the scheduled combination routes: (1) Mexicali, Mexico, on the one hand, and Los Angeles, CA, on the other hand, and Los Angeles, CA, on the other hand; (2) Ciudad Juarez, Mexico, on the one hand, and Los Angeles, CA, on the other hand; (3) Villahermosa, Mexico, on the one hand, and Houston, TX, on the other hand; (4) Zacatecas, Mexico, on the one hand, and Houston, TX, on the other hand; and (5) Mexico City/Toluca, Mexico, on the one hand, and Ontario, CA, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–30261 Filed 12–11–92; 8:45 am]
BILLING CODE 4910–62–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.51, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Union Pacific Railroad Company

Waiver Petition Docket Number H–92–7

The Union Pacific Railroad Company (UP) requests a waiver of compliance with certain provisions of the railroad power brakes regulation (49 CFR part 232). The UP seeks a waiver of compliance with § 232.12(b), which stipulates, "Each carrier shall designate additional inspection points not more than 1,000 miles apart where intermediate inspection will be made to determine that—

(1) Brake pipe leakage does not exceed five pounds per minute;

(2) Brakes apply on each car in response to a 20-pound service brake pipe pressure reduction; and

(3) Brake rigging is properly secured and does not bind or foul.

The UP requests the waiver for a period of six (6) months duration from § 232.12(b) in which to perform a test. The test will include approximately 22 trains per day which presently receive a 1,000 mile intermediate train air brake test at Salt Lake City, Utah. The trains would be operated to either destination or an intermediate train brake testing location, and the distances the trains will travel are between 1,362 miles and 1,648 miles.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. However, if an opportunity for oral comment is requested, such request must be made in writing within 10 days from the date of publication of this notice. If any interested party desires an opportunity for oral comment, they shall do so in writing and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number (H–92–7) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.
Communications received within 30 days from the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on December 10, 1992.

Phil Olekszyk,
Deputy Associate Administrator for Safety.
[FR Doc. 92–30404 Filed 12–11–92; 8:45 am]
BILLING CODE 4910–06–M

Federal Transit Administration

Charter Services Demonstration Program; Advisory Committee Meeting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces the second meeting of the advisory committee established to assist the Federal Transit Administration (FTA) in developing regulations to implement the charter services demonstration program mandated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). This statutorily mandated advisory committee, equally representative of public transit agencies and privately owned charter companies, will provide a forum for discussion of key issues relating to the effectiveness and/or need for the modification of the current charter service regulation.

Today's notice announces a meeting of the advisory committee, which is open to the public.

DATES: The second meeting of the advisory committee will take place on January 11, 1993, from 8:30 a.m. to 5 p.m.

ADDRESS: The advisory committee meeting will be held in room 2230 at the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Office of the Chief Counsel, Federal Transit Administration (TCC–32), at 202–366–1936.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1991, the President signed into law the Intermodel Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240) providing authorization for mass transportation, highways, and highway safety programs for the next six years. The purpose of

this Act is to develop a National Intermodal Transportation System that is economically sound, which provides the foundation for the Nation to complete in the global economy and will move people and goods in an energy efficient manner.

Title III of the Act relates to the mass transit program. Section 3040 of this title requires the FTA to issue regulations implementing a charter services demonstration program in not more than four states, which would allow transit operators to provide charter service to meet the needs of government, civic, charitable, and other community activities which would not otherwise be met in a cost-effective and efficient manner. Section 3040 also provides that in developing such regulations, the FTA shall consult a board that is equally represented by public transit operators and privately owned charter services.

Major Issues

The demonstration regulations and program have been mandated in response to concerns expressed by local transit operators about the existing charter service regulation (49 CFR part 604). It is intended that these new demonstration regulations will grant public transit operators additional flexibility that is not afforded under existing charter regulations, without creating undue competition for privately owned charter operators. The results of the demonstration program will help to determine the most effective method for providing charter services to local communities, and whether the current regulations need to be modified.

To implement this statutory mandate, the FTA established a Federal Advisory Committee, effective March 16, 1992. Appended to this preamble is a list of member organizations. The first meeting of the Advisory Committee took place in Washington, DC on May 4, 1992. With the advice and recommendation of the Advisory Committee, the FTA developed a proposed demonstration program. Under this program, a State Department of Transportation (State DOT) or metropolitan planning organization (MPO) in each of the selected sites would appoint a local advisory panel composed of representatives of the public and private sectors. The advisory panel would recommend to the State DOT or MPO that a public transit agency participating in the program be allowed to provide certain types of charter service. The State DOT or MPO would accept recommendations which received a unanimous vote from the advisory panel, and decide to grant or deny other recommendations, based on certain set criteria. There would be a limited appeal to the FTA of the State DOT's or MPO's decision. The demonstration would take place during a 12 to 18 month period, in six different sites. Data collected during the demonstration would be presented to Congress as directed by section 3040(c) of ISTEA.

On October 28, 1992, the FTA issued a notice of proposed rulemaking (NPRM) describing the demonstration program, and seeking comments and proposals. The period for submittal of comments and proposals ends on December 28, 1992. The FTA intends to pre-select six sites from among the proposals received, and to submit them for discussion and comment to the Advisory Committee at its January 11, 1993, meeting.

Meeting Procedures

The meeting of the Charter Services Demonstration Program Advisory Committee will be held on January 11, 1993, from 8:30 a.m. to 5 p.m. The goal of the committee is to provide advice and comment on the selection of sites for the demonstration program and the establishment of procedures to be followed by localities participating in the program.

Interpreters and assistive listening devices are available for persons with hearing impairments and written materials and hearing transcripts are available in accessible formats, upon request. All meetings of the Charter Services Demonstration Program Federal Advisory Committee are open to the public.

Appendix—Charter Services Demonstration Program Advisory Committee

Membership List—Public Transit Operators and their Representatives

1. Capital Area Transportation Authority, Lansing, Michigan.
2. Metropolitan Transit Authority of Harris County, Houston, Texas.
3. Monterey-Salinas Transit Authority, Monterey, California.
4. Central Oklahoma Transit Authority, Oklahoma City, Oklahoma.
5. Toledo Area Transit Authority, Toledo, Ohio.
6. Mass Transit Administration, Baltimore, Maryland.
7. Metropolitan Atlanta Regional Transit Authority, Atlanta, Georgia.
8. Pinellas-Suncoast Transit Authority, Clearwater, Florida.
9. Greenville Transit Authority, Greenville, South Carolina.
10. American Public Transit Association, Washington, DC.
11. Michigan Department of Transportation, Lansing, Michigan.
12. Sacramento Area Council of Governments, Sacramento, California.

Privately Owned Charter Services and their Representatives

1. Indian Trails Bus Company, Oswosso, Michigan.
2. American Bus Association, Washington, DC.
3. Lake Front Lines, Brookpark, Ohio.
4. American Coach Lines, Tuxedo, Maryland.
5. Academy Bus Tours, Newark, New Jersey.
6. Kerrville Bus Lines, San Antonio, Texas
7. Antelope Valley Bus, Lancaster, California.
8. Hotard Destinations Services, New Orleans, Louisiana.
9. Airport Ground Transportation Assn., Knoxville, Tennessee.
10. Arrow Stage Lines, Phoenix, Arizona.
11. California Bus Association, San Francisco, California.
12. Northfield Lines, Inc., Northfield, Minnesota.

Issued on: December 9, 1992.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 92–30251 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–57–M

Research and Special Programs Administration

[Docket No. P–90–1W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver; Panhandle Eastern Corporation

The Panhandle Eastern Corporation (Panhandle) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with the repair requirements of 49 CFR 192.713(a) to allow the installation of a proprietary composite reinforced (CR) sleeve material (Clock Spring™ manufactured by Clock Spring Company of North America, Long Beach, CA) as a full encirclement wrapped sleeve for the repair of imperfections and damages in steel pipe at six locations on its Line #2 in Fayette County, Ohio. Currently under § 192.713(a), the repair permitted to each imperfection or damage that impairs the serviceability of a segment of steel transmission line operating at or above 40 percent of specified minimum yield strength (SMYS) must be either by cutting out the segment and replacing a cylindrical piece of pipe or by installing over the segment a full encirclement welded split sleeve.

Proposal and Rationale Submitted by Panhandle

The proprietary repair method proposed consists of installing a CR sleeve material in coil form held in place by an adhesive. The adhesive adheres both to the pipe surface and to

the adjacent layers of the coiled composite reinforcement. The composite reinforcement is an isophthalic polyester resin reinforced with fiberglass. The adhesive is a methacrylate. Both the composite reinforcement and the adhesive have histories of suitable performance in other applications described in documents in the docket.

The suitability of a standard CR sleeve for repair of a measured defect is determined using a computer program developed by the Gas Research Institute (GRI). Panhandle reports that destructive tests of pipe with standard CR sleeves installed over manufactured defects repeatedly burst in the non-reinforced steel pipe, demonstrating the validity of the computer program. The CR sleeve does not require pretesting nor are there any welds to be nondestructively tested.

Panhandle describes the following advantages of using CR sleeves:

(1) The CR sleeve material is relatively easy to install.

(2) The CR sleeve material is furnished in standard widths and thicknesses. The length of the repair to be made determines the number of sleeve units to be used. Multiple units can be brought to the job site at the time of excavation. Therefore, there is no delay between determining the extent of the repair and procuring materials for repair.

(3) The crew performing the investigation can make the repair without calling for pipe handling equipment or welders.

(4) In most circumstances, there will be no need to take the line out of service, eliminating interruptions or curtailments to customer service. The CR sleeve repairs can be made while the line is operated at full or reduced pressure.

(5) There is a substantial reduction in cost compared with the repair methods currently acceptable under § 192.713(a).

Panhandle estimates that the average cost of repair will be reduced from $26,000 for a pipe cutout or $16,000 for a welded split sleeve to $9,000 for a CR sleeve. The result would be a maximum savings of $17,000 per replacement repair, or $102,000 for 6 repairs or a minimum of $7,000 per welded split sleeve repair, or $42,000 for 6 repairs. Panhandle claims to make approximately 300 repairs per year. On the Panhandle system alone, annual savings could range between $5,000,000 and $2,000,000 per year.

The subject segment of Line #2 was installed in 1943. The pipe is 20 inch diameter, 0.3125 inch wall, API 5L Grade B. The line was designed and constructed in accordance with the American Society of Mechanical Engineers, ASA B31.1 Code for Pressure Piping. The line was hydrostatically tested in 1943 to a pressure of 985 p.s.i.g. or 90 percent of SNYS. The maximum allowable operating pressure (MAOP) of the line is 750 p.s.i.g. The line operates at 68.6 percent of SMYS. The line segment is in a Class Location 1 area for the entire 19 miles of its length. It is coated with standard grade coal tar enamel. The line has been operated and maintained in accordance with company operation and maintenance procedures which have met, at a minimum, the requirements of appropriate industry codes and standards and since 1970 the requirements of the pipeline safety regulations. The line segment was hydrostatically tested again in 1990 to a minimum of 90 percent of SMYS plus 25 p.s.i. as part of a scheduled pipeline integrity verification program that was initiated in 1987.

In February 1989, an instrumented internal inspection device was used to evaluate the condition of Panhandle's Line #2. The inspection indicated potential anomalies in the pipe which were classified using Panhandle's classification criteria. Type A and B are the most severe anomalies among the Panhandle classification criteria. Panhandle has disposed of the Type A and B anomalies using the conventional techniques currently permitted by § 192.713(a). The anomalies in question are classified as Type C. Type C anomalies are clusters of pits of 25–50 percent of wall thickness and massive, concentrated pitting less than 25 percent of wall thickness.

There are 12 anomaly sites on this segment of Line #2 proposed to be investigated for possible use of a CR sleeve. All 12 sites are at least 1000 feet from the nearest house or other building. The area is rural and the land use is predominantly agricultural. The integrity of all sites was validated by the hydrostatic test performed in June 1990. These 12 sites have been selected as possible candidates for repair using the alternate repair method discussed in this request for waiver. The analysis of the pig run indicates that six of the twelve anomalies will require repair. The need for repair cannot be verified without on-site visual inspection. Therefore, Panhandle intends to investigate and inspect these 12 locations in order to determine whether repair is required. If repair is required, this alternate repair method would be used on up to 6 of these sites.

The investigation of an anomaly site is to be conducted in accordance with a standard Panhandle procedure. Once the pipe is excavated and the coating is removed, the pipe will be examined, corrosion will be measured, and an analysis for serviceability will be performed using ANSI/ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines." The manual is applicable to corroded areas with pit depths between 10 percent and 80 percent of the wall thickness of the pipe. By using the B31G manual, Panhandle can make a determination whether a pipeline can continue to operate at its established MAOP. If the corrosion is superficial and the pipeline can continue to operate at its MAOP, the pipeline will be re-coated, backfilled, and placed back in service. If the corrosion is significant, and the pipeline cannot continue to operate at the established MAOP, as determined by B31G, the MAOP will be reduced or the pipe will be replaced or repaired.

Panhandle believes that this new technology provides an excellent alternative to pipe replacement or the use of a full encirclement welded split sleeve for the repair of imperfections and damage in transmission pipe. The GRI, through various contractors, has conducted extensive analyses and tests on CR sleeves and their component materials. Panhandle reports that the strength of the sleeves has been proven through the GRI development program by laboratory and simulated field tests. Panhandle also reports that, under the GRI program, Clock Spring Company of North America has perfected the installation of the CR sleeves through numerous tests and under actual field conditions. Computerized design criteria have been developed and verified by burst tests in which CR sleeves have been installed over large, deep simulated defects. In all but one atypical sleeve installation, failure occurred in full wall thickness of the unsleeved pipe body. The computer program is designed to verify whether or not the standard CR sleeve will reliably serve as a repair.

Panhandle's waiver request includes a proposal to monitor the condition of the CR sleeves at designated intervals after installation. Panhandle will examine and take measurements of the CR sleeves and separate samples of sleeve materials to be buried adjacent to the sleeves. Two installed sleeves will be evaluated each at 2, 4, and 8 year intervals. Measurements will include strain gage readings of two CR sleeves at 6 month intervals to verify the expected absence of creep of the composite and the adhesive.

RSPA Analysis and Proposed Action

RSPA twice requested additional information to support the Panhandle waiver request. The information included the following topics:

(1) CR sleeve product specifications. The initial information submitted as product specifications was inadequate to define the product.

(2) Design calculations. The initial submission included no basis for selecting the appropriate CR sleeve thickness or verifying that the sleeve selected would perform adequately.

(3) Adhesive curing characteristics and adhesive properties. The initial submission did not include data on adhesive curing characteristics or cured adhesive properties.

(4) Quality assurance and quality control programs applicable to the production of CR sleeves. The initial submission did not include quality control criteria applicable to the CR sleeve product.

(5) Installation procedures. While the initial submission described the application of CR sleeves, it did not describe procedures necessary to ensure adequate application to pipe to the repaired.

(6) Post installation inspections. In the initial submission, the description of post installation inspections was minimal.

(7) Performance in creep of the fiber reinforced resin and the adhesive. The initial submission did not include data assuring that the proposed materials would resist creep in the installed condition.

The accumulated information in the initial waiver application and subsequent submittals represents satisfactory response to the requests by RSPA. The information provided by Panhandle is available in the docket.

In addition to the advantages cited by Panhandle, RSPA considers that the ability to make a repair without welding eliminates the possibility of cracking and pipeline failure attributable to residual stresses from welding and to hydrogen induced cracking associated with welding. Also eliminated is the possibility of burning through the pipe wall while welding. Overall, RSPA considers the CR sleeve repair procedure to be a safe alternative to either the welded split sleeve repair procedure or the pipe replacement procedure, both currently permitted by § 192.713(a).

RSPA believes that 49 CFR 192.713(a) should be waived to permit Panhandle to install CR sleeves as a permanent repair of six of the twelve corrosion anomalies cited in Line #2 in Fayette County, Ohio. RSPA believes that the use of this technology provides at least the same level of integrity as replacement of pipe or installation of a full encirclement welded split sleeve.

Interested persons are invited to comment on the proposed waiver by submitting in duplicate such data, views, or judgments as they may desire. Communications should identify the Docket and Notice numbers in the heading of this document, and be submitted to Dockets Unit, Room 8421, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590.

All comments received before February 12, 1993, will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments will be available for viewing between the hours of 8:30 a.m. to 5 p.m., before and after the closing date for comments. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC, on December 8, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 92–30216 Filed 12–11–92; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 8, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8833.
Type of Review: New Collection.
Title: Treaty-Based Return Position Disclosure Under section 6114 or 7701(b).

Description: Form 8833 will be used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based return position disclosure required by Regulations section 301.7701(b)–7(b) for "dual resident" taxpayers.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 3 hours, 7 minutes.
Learning about the law or the form: 47 minutes.
Preparing and sending the form to the IRS: 53 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 28,680 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–30272 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 8, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0915.
Form Number: IRS Form 8332.
Type of Review: Extension.

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.

Description: This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 7 minutes.

Learning about the law or the form: 5 minutes.

Preparing the form: 7 minutes.

Copying, assembling, and sending the form to the IRS: 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 81,000 hours.

OMB Number: 1545–1013.

Form Number: IRS Form 8612.

Type of Review: Revision.

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 6 hours, 13 minutes.

Learning about the law or the form: 1 hour, 47 minutes.

Preparing and sending the form to the IRS: 1 hour, 58 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 200 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–30271 Filed 12–11–92; 8:45 am]

BILLING CODE 4830–01–M

[Number: 16–14]

Execution of Tax Withholding Agreements

Dated: December 7, 1992.

1. *Delegation.* By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, I hereby authorize the Commissioner, Financial Management Service, to execute tax withholding agreements with State and local governments.

2. *Redelegation.* The authority delegated by this directive may be redelegated to personnel of the Financial Management Service.

3. *Cancellation.* Treasury Directive 16–41, "Executive of Tax Withholding Agreements," dated September 29, 1986, is superseded.

4. *Authorities.*

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 5 U.S.C. 5516, 5517, and 5520.

c. 31 CFR part 215.

5. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–30209 Filed 12–11–92; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 13, 1993, at 2:30 p.m.
Wednesday, January 27, 1993, at 2:30 p.m.
Wednesday, February 10, 1993, at 2:30 p.m.
Wednesday, February 24, 1993, at 2:30 p.m.
Wednesday, March 10, 1993, at 2:30 p.m.
Wednesday, March 24, 1993, at 2:30 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 3, 1992.

By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–30270 Filed 12–11–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 240
Monday, December 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: December 16, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 970th Meeting—December 16, 1992, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 11337–001, Moreland Energy Company
CAH–2.
Project No. 10551–021, City of Oswego, New York
CAH–3.
Project No. 2572–008, Great Northern Paper, Inc.
CAH–4.
Project No. 2232–286, Duke Power Company
CAH–5.
Project No. 3492–045, Allegheny No. 6 Hydro Partners
Project No. 3671–043, Allegheny Hydro Partners
CAH–6.
Project Nos. 9732–000 and 002, Brookside Hydroelectric Company, Inc.
Project Nos. 9277–000 and 002, Riverside Dam, Inc.
Project Nos. 10080–000 and 001, Lower Falls Hydro Company, Inc.
CAH–7.
Project No. 2523–002, Wisconsin Electric Power Company
CAH–8.
Docket No. RM93–5–00, Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act

Consent Electric Agenda

CAE–1.
Omitted
CAE–2.
Docket Nos. ER93–85–000 and EL93–7–000, Connecticut Yankee Atomic Power Company
CAE–3.
Docket No. ER92–533–000, Louisville Gas and Electric Company
CAE–4.
Docket No. EL88–1–003, Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company
Docket Nos. ER88–31–002 and ER88–32–002, Indiana Michigan Power Company
Docket Nos. ER90–270–003 and ER90–271–003, Indiana Michigan Power Company
CAE–5.
Docket No. EG93–2–000, Doswell Limited Partnership
CAE–6.
Docket No. EG93–4–000, Costanera Power Corporation
CAE–7.
Docket No. EG92–302–001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–8.
Docket Nos. EG92–484–001, ER92–512–001 and ER92–817–001, New England Power Company
CAE–9.
Docket No. ER89–48–002, Southern Company Services, Inc.
CAE–10.
Docket Nos. ER91–150–006 and ER91–570–005, Southern Company Services, Inc.
CAE–11.
Omitted
CAE–12.
Docket No. EL92–25–001, Cities and Villages of Albany and Hanover, Illinois; Alta Vista, Bellevue, Fairbank, Fredericksburg, Grafton, Guttenberg, Readlyn, Sabula, and Strawberry Point, Iowa; and Rushford and St. Charles, Minnesota v. Interstate Power Company
CAE–13.
Docket No. FA88–62–001, Wisconsin Electric Power Company
CAE–14.
Omitted
CAE–15.
Docket Nos. ER92–624–000, and 001, Western Resources, Inc. and Kansas Gas and Electric Company
CAE–16.
Omitted
CAE–17.
Docket No. RM85–17–000–Regulation of Electricity Sales-for-Resale and Transmission Service

Consent Miscellaneous

CAM–1.
Docket No. RM92–17–000, Elimination of Certain Filing Fees in Parts 346 and 381
CAM–2.
(A) Docket No. RO88–10–000, Houston Oil and Refining Inc. and Joseph A. Imparato
(B) Docket No. RO86–13–000, Merit Petroleum, Inc.
(C) Docket No. RO87–19–000, Pel-Star Energy, Inc. and John H. Harvison
(D) Docket No. RO87–6–000, Petrade International, Inc.
(E) Docket No. RO88–11–000, Port Petroleum, Inc. Morris M. James, T. Michael Howell, and C. Gregory Crafts
(F) Docket No. RO88–1–000, Leonard O. Rice d/b/a Rice Oil Company and Rice-Lindquist, Inc.

Consent Oil and Gas Agenda

CAG–1.
Docket No. RP93–29–000, ANR Pipeline Company
CAG–2.
Docket Nos. RP91–111–006 and 007, North Penn Gas Company
CAG–3.
Docket No. RP92–167–000, Natural Gas Pipeline Company of America
CAG–4.
Docket No. MT88–12–006, El Paso Natural Gas Company
CAG–5.
Docket No. RP93–28–000, Southwest Gas Transmission Company
CAG–6.
Omitted
CAG–7.
Docket No. RP88–67–061, Texas Eastern Transmission Corporation
CAG–8.
Docket Nos. RP93–31–000 and CP88–328–000, Transcontinental Gas Pipe Line Corporation
CAG–9.
Docket Nos. RP91–229–003, 004, 005 and 006, Panhandle Eastern Pipe Line Company
CAG–10.
Docket No. RP91–188–000, El Paso Natural Gas Company
CAG–11.
Docket Nos. RP91–41–015, RP91–90–008, TM92–2–21–005, TM92–3–21–005, TM92–9–21–004, TM92–10–21–003, TM92–11–21–002 and TM91–12–21–

004, Columbia Gas Transmission Corporation
CAG–12.
Docket No. RP92–237–001, Alabama-Tennessee Natural Gas Company
CAG–13.
Docket No. TQ92–5–1–006, Alabama-Tennessee Natural Gas Company
CAG–14.
Docket Nos. TA91–1–17–007, 003, 005, and TM91–2–17–003, Texas Eastern Transmission Corporation
CAG–15.
Docket Nos. RP88–259–061, CP89–1227–015, RP90–124–011 and RP90–161–007, Northern Natural Gas Company
CAG–16.
Docket No. RP92–132–009, Tennessee Gas Pipeline Company
CAG–17.
Docket No. RP92–165–005, Trunkline Gas Company
CAG–18.
Omitted
CAG–19.
Docket No. RP91–229–014, Panhandle Eastern Pipe Line Company
CAG–20.
Docket No. RP88–262–021, Panhandle Eastern Pipe Line Company
CAG–21.
Docket No. RP91–164–006, Granite State Gas Transmission, Inc.
CAG–22.
Docket No. RP88–211–027, CNG Transmission Corporation
CAG–23.
Docket Nos. RP87–30–000 (Phase II) and RP90–69–000, (Phase A), Colorado Interstate Gas Company
CAG–24.
Docket No. RP91–232–000, Pacific Interstate Transmission Company v. El Paso Natural Gas Company
CAG–25.
Docket No. RP91–166–014, Northwest Pipeline Corporation
CAG–26.
Docket Nos. RP92–50–001 and CP90–406–000, High Island Offshore System
CAG–27.
Docket No. RP92–135–000, West Texas Gas, Inc.
CAG–28.
Docket No. RP91–189–004, Midwestern Gas Transmission Company
CAG–29.
Omitted
CAG–30.
Docket No. RP92–15–000, Enogex, Inc.
CAG–31.
Docket Nos. IS92–21–000 and IS92–40–000, Total Pipeline Corporation
CAG–32.
Docket Nos. IS91–24–000 and IS91–30–000, Tecumseh Pipe Line Company
CAG–33.
Docket No. GP93–1–000, Louisiana Office of Conservation, Tight Formation Determination, Louisiana–13, FERC No. JD92–06945T
CAG–34.
Docket No. GP91–8–001, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a division of KN Energy, Inc.
Docket No. GP91–10–001, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73
CAG–35.
Docket No. GP92–14–000, Northern Natural Gas Company v. Woods Petroleum Corporation
CAG–36.
Docket Nos. RS92–24–002, RP88–115–031, RP90–104–019, RP90–192–012 and CP89–1119–003, Texas Gas Transmission Corporation
CAG–37.
Docket No. RS92–5–000, Columbia Gas Transmission
Docket No. RS92–6–000, Columbia Gulf Transmission Company
CAG–38.
Docket No. RS92–1–003, ANR Pipeline Company
CAG–39.
Docket Nos. CP91–1884–002 and CP91–1389–003, Great Lakes Gas Transmission Limited Partnership
CAG–40.
Docket No. CP92–189–001, Superior Offshore Pipeline Company
CAG–41.
Docket No. CP92–241–007, Kern River Gas Transmission Company
CAG–42.
Docket No. CP92–405–001, Transcontinental Gas Pipe Line Corporation
CAG–43.
Docket No. CP92–472–001, Equitrans, Inc.
CAG–44.
Docket No. CP92–543–002, Panhandle Eastern Pipe Line Company
CAG–45.
Docket No. CP92–441–001, National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company
CAG–46.
Docket No. CP91–2206–006, Tennessee Gas Pipeline Company
CAG–47.
Omitted
CAG–48.
Omitted
CAG–49.
Omitted
CAG–50.
Omitted
CAG–51.
Docket No. CP92–296–001, Northwest Pipeline Corporation
Docket No. CP92–289–002, El Paso Natural Gas Company
CAG–52.
Docket No. CP78–124–019, Northern Border Pipeline Company
CAG–53.
Docket No. CP90–2155–001, Southern Natural Gas Company
CAG–54.
Docket No. CP93–54–000, Transcontinental Gas Pipe Line Corporation
CAG–55.
Omitted
CAG–56.
Omitted
CAG–57.
Omitted
CAG–58.
Omitted
CAG–59.
Omitted
CAG–60.
Docket No. CP92–583–000, City Gas Company of Florida
CAG–61.
Docket No. CP89–2035–000, Meridian Oil Gathering, Inc.
CAG–62.
Docket No. CP92–657–000, Southwest Gas Corporation v. El Paso Natural Gas Company
CAG–63.
Docket No. RP93–27–000, Transcontinental Gas Pipe Line Corporation
CAG–64.
Docket Nos. RP90–109–006, RP87–62–014 and RP86–148–009 (Phase I), Pacific Gas Transmission Company
CAG–65.
Docket No. CP89–634–021, Iroquois Gas Transmission System, L.P.
CAG–66.
Docket No. RP92–187–000, Florida Gas Transmission Company
CAG–67.
Docket No. CP89–661–021, Algonquin Gas Transmission Company
CAG–68.
Docket No. CP92–259–001, Sumas International Pipeline, Inc.
Docket Nos. CP92–247–002, CP92–336–002 and CP92–383–000, Northwest Pipeline Corporation
Docket No. CP92–247–002, Northwest Pipeline Corporation and Washington Water Power Corporation
CAG–69.
Docket No. CP92–6–007, Southern Natural Gas Company and South Georgia Natural Gas Company
Docket No. CP92–311–003, Southern Natural Gas Company
CAG–70.
Docket No. CP90–1391–002, Arcadian Corporation v. Southern Natural Gas Company
CAG–71.
Docket No. ST90–267–002, Transok Gas Transmission Company (Successor to TEX/CON Gas Pipeline Company)
CAG–72.
Docket No. CP92–233–003, El Paso Natural Gas Company

Hydro Agenda

H–1.
Docket No. EL85–42–001, Guy M. Carlson. Order on rehearing and late intervention.

Electric Agenda

E–1.
Docket No. ER92–280–000, Public Service Electric and Gas Company. Order on transmission rate filing.
E–2.
Docket Nos. ER92–317–001 and ER92–456–001, Public Service Company of Colorado. Order on rehearing regarding transmission rates.
E–3.
Docket No. ER91–565–000, New England Power Company. Opinion on initial

decision regarding post-retirement benefits other than pensions.

E–4.
Docket No. EC92–21–000, Entergy Services, Inc.
Docket No. ER92–806–000, Gulf States Utilities Company. Order on rate filing and request for merger authorization.

E–5.
Omitted

Miscellaneous Agenda

M–1.
Docket No. PL93–1–000, Post-Employment Benefits Other Than Pensions. Statement of Policy.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket No. RP91–143–005, Great Lakes Gas Transmission Limited Partnership. Opinion No. 367–A and order on rehearing.
(B) Docket Nos. RP89–186–008 and RP90–20–005, Great Lakes Gas Transmission Limited Partnership. Order on rehearing of Opinion No. 368.

II. Restructuring Matters

RS–1.
Docket Nos. RS92–60–002 and 003, El Paso Natural Gas Company. Order on capacity release.

RS–2.
Docket No. RS92–87–000, Transwestern Pipeline Company. Order on Order No. 636 compliance filing.

RS–3.
Docket No. RS92–11–000, Texas Eastern Transmission Corporation. Order on Order No. 636 compliance filing.

RS–4.
Docket No. RS92–22–002, Panhandle Eastern Pipe Line Company. Order on Order No. 636 compliance filing.

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP92–184–000 and 001, Texas Eastern Transmission Corporation
Docket Nos. CP92–185–000 and 001, Algonquin Gas Transmission Company. Application to construct facilities and to provide firm transportation for six shippers.

PC–2.
Docket Nos. CP91–732–003 and CP88–332–024, Indicated Shippers v. El Paso Natural Gas Company. Order on rehearing re request for modification of October 7, 1992 order.

PC–3.
Docket No. CP80–34–009, Panhandle Eastern Pipe Line Company
Docket No. CP80–35–009, Colorado Interstate Gas Company. Order on application to amend existing exchange/transportation/sales agreement.

PC–4.
Omitted

PC–5.
Docket Nos. CP92–182–000 and 001, Florida Gas Transmission Company
Docket No. CP92–415–000, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company. Application to construct Phase III facilities and application for expansion of Mobile Bay facilities.

Dated: December 9, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30407 Filed 12–10–92; 12:42 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 4:05 p.m. on Wednesday, December 9, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to administrative enforcement proceedings and to the probable failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: December 10, 1992.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30380 Filed 12–10–92; 11:47 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, December 18, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–30355 Filed 12–10–92; 11:46 am]

BILLING CODE 6210–01–M

federal register

Monday
December 14, 1992

Part II

Pension Benefit Guaranty Corporation

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

RIN 1212–AA41 and RIN 1212–AA47

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The regulations in this final rule replace regulations of the Pension Benefit Guaranty Corporation on notices of intent to terminate (29 CFR Part 2616) and determination of plan sufficiency and termination of sufficient plans (29 CFR Part 2617), as modified by a 1986 notice of interim procedures and a 1988 notice of revised termination rules. The regulations being replaced were, to a great extent, rendered obsolete by enactment of the Single-Employer Pension Plan Amendments Act of 1986 and the 1987 Pension Protection Act, which substantially changed the rules governing voluntary terminations of single-employer plans under Title IV of the Employee Retirement Income Security Act of 1974. Although the 1986 and 1988 notices provided interim guidance, more detailed rules and procedures are needed by plan administrators who wish to terminate single-employer pension plans. Part 2616 prescribes the rules and procedures for distress terminations; Part 2617 prescribes the rules and procedures for standard terminations.

EFFECTIVE DATE: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1987, the Pension Benefit Guaranty Corporation ("PBGC") published in the **Federal Register** (52 FR 33318) proposed rules governing the voluntary termination of single-employer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The PBGC, which administers the pension plan termination insurance program under Title IV of ERISA, published the proposed rules in response to substantial changes made in the insurance program by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") (Pub. L. 99–272).

Under SEPPAA, single-employer pension plans could be voluntarily terminated only in a "distress" termination or a "standard" termination. Briefly, a distress termination could occur only if specified procedural requirements are met and if the contributing sponsor of the plan and each "substantial" member of its controlled group demonstrate that they are in such poor financial condition that they cannot, realistically, continue to maintain the plan. A standard termination could occur only if specified procedural requirements are met and if plan assets are sufficient to provide all "benefit commitments" (which generally exceed PBGC guaranteed benefits but fall short of all plan benefits).

In order to provide guidance under the new law to plan administrators in terminating single-employer plans pending revisions to the regulations and accompanying forms, the PBGC had published notices of transition rules and interim procedures on April 10, 1986 (51 FR 12489 and 12491, respectively). Those notices summarized SEPPAA's requirements relating to terminations of single-employer plans, and described the specific steps necessary to terminate a plan under SEPPAA. (SEPPAA was enacted on April 7, 1986, and applied to all terminations with respect to which a notice of intent to terminate was filed or issued on or after January 1, 1986.)

To reflect the new statutory rules, the PBGC proposed to revise totally its two principal regulations dealing with the voluntary plan termination process, *i.e.*, Notice of Intent to Terminate for Non-multiemployer Pension Plans, 29 CFR Part 2616, and Determination of Plan Sufficiency and Termination of Sufficient Plans, 29 CFR Part 2617. In keeping with the structure of the SEPPAA amendments, the PBGC proposed the promulgation of two new parts in its regulations: new Part 2616 dealing solely with distress terminations and new Part 2617 dealing solely with standard terminations.

On December 17, 1987, Congress further amended ERISA's voluntary termination requirements by enacting the Pension Protection Act ("PPA") as Title IX, Subtitle D, Part II, of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). (Congress subsequently clarified a number of the provisions of both SEPPAA and PPA in the technical corrections portion of the Omnibus Budget Reconciliation Act of 1989 (Title VII, Subtitle H) (Pub. L. 101–239).) PPA was effective December 17, 1987, and the PBGC published a notice of revised termination rules to alert interested persons to the statutory changes (53 FR 1904, January 22, 1988). The notice also stated that the PBGC's final regulations on voluntary terminations would reflect the PPA amendments discussed therein and that the PBGC was in the process of preparing new forms to revise and combine the then-current termination forms, *i.e.*, Forms 444 and 445 and the PBGC portion of IRS/PBGC Form 5310.

On December 22, 1989, the PBGC published a notice of issuance of new termination forms (54 FR 52904), advising pension practitioners that it was issuing new Forms 500 and 501 for standard terminations and Forms 600 and 601 for distress terminations to replace the then-current termination forms. Those new forms, which were issued for use in plan terminations initiated on or after February 1, 1990, reflect the revised rules and procedures for plan terminations under SEPPAA and PPA. To a certain extent, the new forms also reflect the proposed regulations published earlier.

In the notice of issuance, the PBGC advised pension practitioners that provisions in the forms specifying time limits for completing those termination requirements that, under the statute, are to be completed "as soon as practicable" are to be considered as guidelines only until the final regulations are issued. The final regulations incorporate substantially the same time limits as those specified in the forms (although, as discussed below, the final regulations allow more time for filing the standard or distress termination notice with the PBGC). In addition, the forms contain a number of new or revised definitions, many of which are incorporated into this final regulation, as also discussed below.

The PBGC received 57 comments on the proposed regulations. Most of the commenters are professionals whose practice includes the pension benefits area, *i.e.*, attorneys, actuaries, accountants, and benefit consultants or firms; commenters also represent insurance companies, unions, and associations active in the private pension community. The majority of comments focused on the procedures for standard terminations rather than the procedures for distress terminations; as discussed below, the major area of concern, on which 50 comments were received, was the time limits for completing the various steps in the termination process The PBGC has

reviewed all comments and has decided to make a number of changes, both in response to the comments and as a result of its experience in implementing the new statutory rules.

The discussion that follows deals first with a number of general issues that cut across various provisions of both the standard termination and distress termination regulations. Next is a section-by-section discussion of changes to the standard termination regulation and, then, the distress termination regulation. (The standard termination regulation is dealt with first, both because most terminations are standard terminations and because many of the distress termination rules are merely variants of the standard termination rules.) Many of the provisions in both regulations have been reorganized or rewritten for clarity; this discussion will deal only with significant substantive changes or reasons why requested changes were not made. Unless otherwise indicated, all citations are to sections in the final regulations.

General

PPA Changes

As noted above, after publication of the proposed rules, Congress enacted PPA, making a number of substantive changes in the pension plan termination insurance program. Those changes, insofar as applicable, have been incorporated into these final regulations.

For standard terminations, the major PPA change was to increase the benefits that a plan must be able to satisfy upon termination, i.e., the SEPPAA requirement that a plan be able to provide all "benefit commitments" was replaced by the PPA requirement that a plan be able to provide all "benefit liabilities" under the plan. This PPA change—along with the Retirement Equity Act of 1984 ("REA") (Pub. L. 98–397) and the issuance by the Internal Revenue Service of its final REA regulations (T.D. 8219, 1988–2 C.B. 48; 53 FR 31837, August 22, 1988)—has created a new coordination between Title IV of ERISA and the Internal Revenue Code. In particular, "benefit liabilities" are determined under the Internal Revenue Code, and include certain forms and benefit options that are protected under Code section 411(d)(6). The inclusion of such protected forms and benefit options tends also to deemphasize the importance of the plan termination date to participants' benefit entitlements in a standard termination, since participants may meet the conditions for entitlement after that date.

For distress terminations, PPA made changes in the liquidation and reorganization distress criteria; required that every member of a contributing sponsor's controlled group, rather than only "substantial" members, meet one of the distress criteria; increased termination liability to unfunded benefit liabilities; and eliminated the section 4049 trust, substituting in its place a mechanism (under ERISA section 4022(c)) whereby the PBGC pays participants and beneficiaries a portion of their outstanding benefit liabilities (i.e., unfunded benefit liabilities that are not guaranteed benefits) from the PBGC's employer liability recovery. (A more detailed discussion of the various PPA changes relating to standard and distress terminations appears in the PBGC's Notice of Revised Termination Rules, 53 FR 1904 (January 22, 1988).) The PBGC has revised the proposed regulations throughout to reflect these changes.

Time Limits

As noted above, the vast majority of commenters was concerned with the time limits for various steps in the termination process that were included in the proposed regulations. Those limits in large part implement the "as soon as practicable" standards in ERISA section 4041(b)(2)(A) and (c)(2)(A) (relating to the requirement for filing a termination notice with the PBGC) and ERISA section 4041(b)(2)(D) (relating to the time within which distribution of assets in a standard termination must be completed after the end of the period within which the PBGC may issue a notice of noncompliance ("NONC") pursuant to ERISA section 4041(b)(2)(C)).

One of Congress' goals in revising the termination rules was to simplify and expedite the PBGC's review of terminations under which the PBGC would not be called on to pay guaranteed benefits, thereby permitting faster distribution of plan assets as well as enabling the PBGC to devote more of its resources to those terminations that do impose liabilities on the plan termination insurance program. In furtherance of this Congressional goal, the PBGC attempted in the proposed regulations to keep to a minimum the maximum length of time from the issuance of the notice of intent to terminate ("NOIT") to completion of the distribution of plan assets in a standard termination.

In the case of distress terminations, the PBGC similarly sought to limit the maximum time for various processing steps (in particular, the time for filing the distress termination notice and, in the case of a plan that is sufficient at least for guaranteed benefits and that thus will close out in the private sector, the time for completing the distribution of plan assets). (The overall time for terminating in a distress termination is not subject to precise prescription; among other things, the time needed for the PBGC to make certain required determinations (e.g., as to whether the distress criteria are met and as to the level of plan sufficiency) will vary significantly based on the facts and circumstances of the particular case.) The following discussion will focus, as did the comments, on the standard termination time limits. However, where appropriate, the PBGC has made generally corresponding changes to the distress termination time limits, and has noted those changes below.

While there were two objections to the establishment of any time limits, there was considerably more support for the PBGC's establishment of specific rules. (The PBGC explained the reasons for this approach in the preamble to the proposed regulations, 52 FR at 33322–33323.) However, 49 of the commenters objected that some or all of the time limits set forth in the proposed regulations were too short, and suggested alternatives. For some, the primary concern was the time within which the standard termination notice is to be filed with the PBGC; for most, the primary concern was the time set for distribution of plan assets. The PBGC agrees with these concerns in large part, and has substantially revised the time limits with the comments in mind.

As issued, the proposed standard termination regulation allowed a maximum of 7–11 months from the issuance of the NOIT to completion of distribution. (The 7–11 month period, or 210–330 days, consisted of a period of 60–180 days from issuance of the NOIT to the proposed termination date; 60 days from the proposed termination date to the filing of the standard termination notice; 60 days for the PBGC to review the standard termination notice and to determine whether to issue a notice of noncompliance; and 30 days from the expiration of the PBGC's review period for the plan administrator to complete the distribution of plan assets.) This final regulation increases the overall time period to 14–15 months (with extensions possible); but, more importantly, it reallocates the individual time periods to reflect the public's comments.

Under the final regulations, §§ 2616.22 and 2617.22 (proposed §§ 2616.12 and 2617.12), less time is allowed between the NOIT and the

proposed termination date (decreased from a maximum of 180 days to a maximum of 90 days). This change reflects the PBGC's experience that very few plan administrators propose termination dates in the NOIT (either in a standard or distress termination) that are more than 90 days after the NOIT (Indeed, one commenter suggested that the minimum 60-day period between the NOIT and the proposed termination date be decreased; however, that is a statutory time period established by ERISA section 4041 (a)(2), (b)(1)(A), and (c)(1)(A), which cannot be decreased by the PBGC.) Moreover, by shortening this time period, the PBGC is better able to lengthen those time periods the commenters expressed concern about without unacceptably lengthening the overall maximum time limit. (The proposed termination date in a distress termination is discussed more fully under "Section 2616.2—Definitions.")

A number of commenters stated that the time period for filing the standard termination notice (120–240 days after the NOIT is issued, but only 60 days after the proposed termination date) was inadequate, noting that the bulk of the processing work necessary to complete notices of plan benefits (which must be issued at or before the time the standard termination notice is filed) and file the standard termination notice with the PBGC is generally not begun until the proposed termination date; before then, the plan's population and participants' and beneficiaries' benefits "as of" the proposed termination date cannot be known with certainty. In response to these comments, the PBGC had lengthened the period for filing the standard termination notice from 60 to 90 days when it established "guidelines" in its 1989 form package. Experience has demonstrated that even more time is needed in many cases, and the PBGC has therefore decided to lengthen this period further, to 120 days after the proposed termination date. (While there is no provision for extension of this 120-day period, the plan administrator may defer its commencement (and thus, in effect, extend the period) if the standard termination notice filed with the PBGC proposes a termination date that is later than the one proposed in the NOIT; in no event, however, may this later proposed termination date be more than 90 days after the date of issuance of the NOIT.) See § 2617.25. The PBGC has made generally corresponding changes (in §§ 2616.2 and 2616.24) to the time limits for filing the distress termination notice.

A clear majority of commenters objected to the 30-day time limit for completing the distribution of plan assets. (This 30-day time period was measured from the end of the PBGC's review period in a standard termination; in a distress termination sufficient for at least guaranteed benefits, it was measured from the date the plan administrator receives the PBGC's distribution notice.) The reason most cited was the length of time it generally takes to receive a favorable determination letter from the Internal Revenue Service ("IRS"). (In the preamble to the proposed regulation the PBGC suggested that, to alleviate this problem, it would be prudent for plan administrators to file with the IRS early in the procedure (*i.e.*, at or before the time of issuance of the NOIT) (52 FR at 33322). One commenter noted that some IRS districts will not accept early filings; a number of others cited instances in which determination letters were not received until much later than the maximum time allowed in the proposed regulation.) Other reasons given were (1) delays caused by participants' failures to respond to election notices in a timely manner, (2) the time required to complete the purchase of annuity contracts, and (3) the need to liquidate long-term assets (which may have penalties for premature withdrawal) or illiquid assets.

The PBGC is sensitive to these concerns and has therefore decided, as discussed below, to extend significantly the time limits for distribution. Nonetheless, the PBGC reminds plan administrators that the implementation of a decision to terminate a pension plan requires sound and careful planning, and that they should take all appropriate steps to ensure a timely distribution.

Accordingly, the PBGC has increased, from 30 days to 180 days, the time between the date the PBGC's review period ends in a standard termination and the date by which assets must be distributed. See § 2617.28(a); compare proposed § 2617.18(a). This revised time period for asset distribution generally should enable a plan administrator to obtain a determination letter before distribution must be completed.

The final rule for standard terminations also provides that if the plan administrator files a request for a determination letter with the IRS on or before the date that the standard termination notice is filed with the PBGC, but does not receive a determination letter at least 60 days before the expiration of the 180-day distribution period, the time for plan asset distribution will automatically be extended to 60 days after the date of a favorable determination letter provided that the plan administrator notifies the PBGC, prior to expiration of the 180-day distribution period, that the plan is entitled to such an extension. (Because of the similarities between the information needed to issue notices of plan benefits and complete the standard termination notice, and that needed to file a request with the IRS for a determination on the tax qualification of a plan, the PBGC expects that plan administrators will be able to file with the IRS at the same time they file with the PBGC.) In other limited situations, the PBGC may grant a discretionary extension. See § 2617.28(e)-(f).

For distress terminations that are sufficient for at least guaranteed benefits and that thus will close out in the private sector, the PBGC has similarly extended the distribution time limit from 30 days to 180 days. The proposed regulation did not provide for the plan administrator's issuance to participants, prior to distribution, of any notices regarding their plan benefits (except, under proposed § 2616.14(e), in the limited circumstance in which a plan was sufficient for all benefit commitments); this step has been added to the final rule (see "§ 2616.27—Notices of benefit distribution"), and the 180-day distribution time limit is measured from the date the plan administrator completes issuance of the notices of benefit distribution. The regulation also provides for extensions of time similar to those described above for standard terminations. See § 2616.29(a).

The following table illustrates the time line for completing a standard termination under the final rules, assuming that (1) the proposed termination date is the minimum 60 days (rather than, *e.g.*, the maximum 90 days) after the date of issuance of the NOIT, (2) each step is completed on the last day permitted, and (3) there are no extensions.

Standard Termination Time Line 420 Days or Approximately 14 Months

Day 0: Notice of intent to terminate
Day 60: Proposed termination date
Day 180: Notices of plan benefits and standard termination notice
Day 240: Notice of noncompliance period ends
Day 420: Distribution completed

Effects of Failure To Meet Termination Requirements

The proposed regulations noted, in various sections, that if the requirements for a voluntary termination (either standard or distress) are not met, the termination is null and

void. In such circumstances, the plan is ongoing. Several commenters expressed concern about the severity of this sanction for failure to comply with the pertinent requirements.

Two commenters suggested that, rather than nullifying a plan termination, the PBGC permit correction of deficiencies. The PBGC may permit correction of certain minor deficiencies, such as clerical errors, where the rights of the parties involved are not adversely affected. Similarly, where the standard or distress termination notice is incomplete, the PBGC will advise the plan administrator of the missing item(s) of information and permit completion of the notice (see §§ 2616.25(c)(2), 2617.26(c)). Finally, in a distress termination, the PBGC may waive any requirement with respect to notices to be filed with the PBGC if it will be less costly or administratively burdensome to the PBGC to do so (§ 2616.3(c)(2)). In other circumstances, however, the PBGC will not waive or permit "correction" of deficiencies.

The PBGC's discretion in this regard is substantially limited, since many of the pertinent requirements are statutory in nature. Moreover, while some of the requirements represent the PBGC's regulatory implementation of statutory requirements, the PBGC believes that these regulatory requirements should be absolute except where the regulation provides otherwise (*e.g.*, by providing for an extension of a time limit under specified circumstances). The PBGC stresses the importance of planning a termination in advance and carefully following the prescribed procedures.

The changes in the time limits, along with the extension provisions discussed above, should alleviate the commenters' concerns to a great extent. The most commonly missed deadline, other than that for distribution, is the statutory 60-day minimum period between issuance of the NOIT and the proposed termination date, and that normally occurs because the plan administrator miscounted the days. The PBGC has attempted to give greater guidance in the computation of time periods, *e.g.*, in §§ 2616.8 and 2617.9.

Another commenter asked whether a plan termination voided for PBGC purposes is also void for other purposes under ERISA. If a termination is null and void because the requirements in the statute and these regulations are not met, the plan is an ongoing plan under ERISA and the Code. However, the PBGC did not intend to imply, as one commenter suggested, that a proper freezing of accruals before the plan termination date in accordance with ERISA section 204(h) would also be voided.

Conversion of Termination

In the preamble to the proposed regulation, the PBGC stated that, if a proposed termination fails to meet the applicable requirements, that termination cannot be converted into the other type of termination in order to preserve the original proposed termination date (52 FR at 33325). The PBGC has reconsidered its position, and has decided that there is no absolute bar against the conversion of a standard termination to a distress termination, or vice versa. The PBGC expects such conversions to be extremely rare, and will determine whether to permit conversion on a case-by-case basis, taking into account the effect conversion would have on the rights of all parties involved.

Penalty Authority

The PBGC notes that PPA enhanced its enforcement authority by adding section 4071 (29 U.S.C. 1371) to ERISA (OBRA '87 section 9314(c)(1)). Section 4071 (as clarified by OBRA '89 section 7881(i)(3)(B)) authorizes the PBGC to assess a penalty when, among other things, a person fails to provide a notice or other material information required under subtitles A, B, C, or D of Title IV of ERISA, or any regulations prescribed thereunder, within the applicable time limit specified therein. The penalty is payable to the PBGC and may not exceed $1,000 for each day that the failure continues.

Effective Date

One commenter requested an effective date of 90 days after publication to allow "plan administrators and their consultants to adapt to the regulations and to develop the appropriate compliance procedures." Another commenter requested that the effective date of the final regulations be 60 days after publication "to allow those terminations which are essentially in process to be completed in accordance with the prior rules."

The PBGC does not believe that a significant delay in the effective date of these regulations (beyond the usual 30 days from date of publication) is necessary, given that the time limits for various stages in the termination process have been substantially increased; the new forms containing many of the basic procedures included in these regulations have been in use since February 1990; and the pension community has generally been following the other basic provisions in the proposed regulations. The PBGC notes, also, that the regulations apply only to terminations with respect to which the NOIT is issued on or after the effective date; terminations in process thus may be completed in accordance with the prior rules. However, the PBGC has decided to defer the effective date slightly (to January 28, 1993) so as to afford adequate time for OMB extension of approval, under the Paperwork Reduction Act, of the collection of information requirements in this final rule and the implementing forms and instructions. (Elsewhere in today's **Federal Register**, the PBGC is publishing a notice of its request to OMB, along with a copy of the revised version of the forms and instructions.)

Standard Terminations

Section 2617.2—Definitions.

Affected party: One commenter noted that there may be circumstances in which a former employee organization would have sufficient ties to an employee benefit program to be properly included as an affected party. The PBGC agrees and included a modified definition in its old termination regulation, as amended in May 1992 (57 FR 22167, May 27, 1992).

Date of distribution and *Irrevocable commitment:* A number of commenters asked for clarification concerning when *distribution* takes place. Several requested that the regulations explicitly provide that the date of *distribution*, in the case of a purchase of an *irrevocable commitment* (*i.e.*, an annuity contract) from an insurer, is the date the liability is transferred to the insurer rather than the date of issuance to the participant of a certificate or policy of insurance.

The PBGC added definitions of *date of distribution* and *irrevocable commitment* to its old termination regulation in May 1992 (57 FR 22167, May 27, 1992), and has included these definitions in this final regulation. These definitions clarify that, as suggested by the commenters, a distribution of benefits through the purchase of an irrevocable commitment occurs when the obligation to provide a benefit to an individual passes from a pension plan to an insurer.

Existing collective bargaining agreement: The PBGC added this definition to clarify the circumstances in which a collective bargaining agreement is deemed to "exist" for purposes of ERISA section 4041(a)(3) and § 2617.5.

Insurer: One commenter requested that the definition of *insurer* be modified to permit plan administrators to purchase irrevocable commitments only from "those insurance companies doing business in states with guaranty

funds and who have an A+ rating with Best's Reports." The definition in the proposed and final regulations is one that has been used for many years by the PBGC in its regulations, *e.g.*, 29 CFR part 2617. On June 21, 1991, the PBGC issued an Advance Notice of Proposed Rulemaking ("ANPRM") (56 FR 28642, 28643) soliciting public comment on whether additional regulation concerning plan administrators' selections of annuity providers for terminating plans is needed and, if so, what such regulation should include. An extended comment period on the ANPRM ended September 19, 1991, and those comments and possible regulatory action are under active consideration. If the PBGC decides to change the definition of insurer as a result of that consideration, it will do so as part of a separate rulemaking action.

Majority owner: The PBGC has added a definition of "majority owner." (The percentage ownership requirement for "majority owner" status under this definition is "50 percent or more" rather than "more than 50 percent.") As discussed more fully below (see "§ 2617.7—Facilitating plan sufficiency"), majority owners may facilitate a standard termination by electing to forego receipt of all or part of their benefit liabilities until the benefit liabilities of all other participants have been satisfied.

Participant: One commenter suggested that the definition of *participant* exclude non-vested former employees "who clearly are not eligible for benefits as a result of plan termination, absent an IRS finding of a pre-termination 'partial termination.'" Whether and to what extent former employees are entitled to receive benefits upon plan termination depends on the definition of "benefit liabilities"; the IRS, rather than the PBGC, has the authority to define that term.

Nonvested, as well as partially or fully vested, former employees may lose any entitlement they may have to benefit liabilities if they are cashed out under the terms of the plan and in accordance with applicable law and regulations. See section 411(a)(7) of the Internal Revenue Code ("Code"); Treas. Reg. § 1.411(a)-7. Whether and for how long former employees who were not cashed out retain benefit entitlements in the event of plan termination is determined under the Code.

The PBGC's *participant* definition governs only entitlement to the various notices in a termination, not entitlement to benefits. The rules governing entitlement to notice, however, should generally match those governing entitlement to benefits. (In particular, the PBGC does not want to burden plan administrators with a requirement to give notice to large numbers of individuals who are not entitled to benefits.) Pending further guidance from IRS, plan administrators wishing to terminate their plans must determine whether former employees retain benefit entitlements upon plan termination; the final regulation, in effect, requires plan administrators to provide such individuals with notice if they are entitled to benefits. Thus, former employees who are "retaining" credited service under the plan are included within the definition of "participant" and are therefore entitled to notice of the termination. Finally, the PBGC added a number of other definitions to incorporate PPA changes, or for clarity or ease of reference.

Section 2617.4—Administration of plan during pendency of termination proceedings.

Proposed § 2617.4 provided that, during the period between the issuance of the NOIT and the end of the PBGC's review period, the plan administrator may not make any distributions to participants "pursuant to or in furtherance of the plan's termination," but could carry out "the normal operations of the plan." Several commenters requested clarification as to whether particular distributions may be permitted as part of the plan's "normal operations."

The PBGC sought to strike a balance in this provision between the need to permit continued operation of the plan with as little disruption to participants as possible during the termination proceedings, and the need to protect plan assets so as to ensure fair treatment of all participants in accordance with their allocation rights under ERISA section 4044. It is difficult, however (as pointed out by the commenters), to distinguish between "normal course" distributions and those pursuant to or in furtherance of a plan's termination. The PBGC therefore has developed (in § 2617.4) rules that would permit lump sum and irrevocable commitment distributions under specified circumstances, but would limit attempts to circumvent termination and distribution requirements through premature distributions. The PBGC stresses that any distribution in furtherance of a termination (whether before or after issuance of the NOIT) before the PBGC's review period ends is a violation of ERISA section 4041(b)(2)(D).

Section 2617.5—Challenges to plan termination under collective bargaining agreement.

This section prescribes rules that apply when a plan termination is challenged on the grounds that the termination would violate the terms and conditions of an existing collective bargaining agreement. The PBGC received several comments on these provisions.

Three commenters suggested that the PBGC should make at least an initial determination as to whether the termination violates an existing collective bargaining agreement and not automatically suspend the termination until there is a final settlement of the dispute. Alternatives suggested were that PBGC at least "review the complaint to eliminate frivolous claims"; make an interim determination that there is "reasonable cause" for the challenge; or make a determination as to the legitimacy of the challenge on the basis of "an opinion of counsel of the plan administrator." The commenters expressed concern about the delay in the termination proceeding pending resolution of the challenge, and the effect of the delay on participants' benefits under the plan to be terminated and under any replacement plan.

The PBGC believes that it is not the appropriate body to decide whether a termination would violate the terms and conditions of a collective bargaining agreement. Labor-management relations law provides mechanisms for resolving such disputes, as do many collective bargaining agreements. The PBGC lacks the expertise needed to make such decisions and, in any event, cannot limit the authority of the usual labor-management forums to decide the same issues. Moreover, because of the many variables that may affect the resolution of such a challenge (*e.g.*, the bargaining history), the PBGC believes that it should not be making any determinations (even as to a claim of frivolity) regarding the merits of a dispute. Therefore, the PBGC has not changed the regulation in this respect.

In the preamble to the proposed regulation, the PBGC stated that the list of "formal challenges" was "intended to be all inclusive" (52 FR at 33321). One commenter approved of this approach. Another suggested, however, that it is "inappropriate for the PBGC to impose a formalized scheme and determine by regulation what types of actions by the parties to the collective bargaining agreement warrant a suspension of the termination process."

The PBGC sought to limit the types of challenges that would trigger suspension of a termination, in an effort to avoid suspension based on "challenges" that were of an "informal" or "preliminary" nature. This approach

poses the risk, of course, that one or more types of challenges could be overlooked; indeed, three commenters correctly pointed out that the proposed regulations erroneously omitted Railway Labor Act challenges. The PBGC agrees with the commenters that the list should not be all-inclusive, and has revised § 2617.5 accordingly.

Finally, the PBGC has clarified that it has the authority to suspend a termination proceeding under § 2617.5 at any time before the termination process (including distribution of plan assets) is completed. The proposed regulation required that PBGC be notified of a formal challenge by the end of its review period; it did not say that the PBGC was precluded from acting if the notification came later. While the PBGC's authority to suspend a termination under section 4041(a)(3) is not limited to the review period, it nonetheless wishes to encourage early filing with the PBGC of any notice of challenge to the proposed termination. Therefore, paragraph (a) of § 2617.5 provides that the PBGC will suspend a proposed termination if it receives notice before the review period ends, and that it may do so if it receives such notification after the end of the review period but before the termination process has been concluded. (PBGC Opinion Letter 89–1, in dictum, contained language suggesting that the PBGC does not have the authority to suspend a termination once the review period ends; that language is incorrect and is hereby rescinded.)

Section 2617.6—Annuity requirements.

This section sets forth the general requirement that benefits payable as an annuity under a plan be provided in annuity form through the purchase of a single premium, nonparticipating, nonsurrenderable annuity from an insurer. In the proposed regulation, exceptions to the annuity requirement and rules governing the form of annuity were reserved because of the need to determine what changes in the PBGC's previous rules were necessary to conform to the requirements of the Retirement Equity Act of 1984 ("REA"). Those rules, plus rules delineating when participating annuities may be purchased, have been added to the final regulation. The PBGC consulted with the IRS in formulating these rules, and intends that they be consistent with provisions of the Code and IRS regulations thereunder in all respects.

In the preamble to the proposed regulation, the PBGC asked for public comment on the proper interaction of REA with ERISA Title IV (52 FR at 33320). The PBGC received suggestions from three commenters on REA issues. The first related to the interaction of REA section 301 "early retirement" benefits and the proposed definition of "benefit commitments"; this is no longer a concern since "benefit liabilities" clearly includes REA section 301 "early retirement" benefits. A second commenter suggested that, where a plan provides for a lump sum option, there was a conflict between the REA rule prohibiting elimination of optional benefit forms and the PBGC's requirement (proposed § 2617.6(a)) that any benefits payable in annuity form be provided through the purchase of "nonsurrenderable" annuities. The PBGC disagrees; an annuity contract may be "nonsurrenderable" and still provide for all optional benefit forms upon a participant's reaching retirement age. Finally, the third commenter stated that the PBGC should not require annuities when the present value of the benefit is $3,500 or less; the regulation so provides in § 2617.6(b) (as did § 2617.4(b)(2) of the old termination regulations).

The PBGC notes that § 2617.4(b) of the old termination regulations contained language suggesting that a participant who is in pay status may not receive a lump sum distribution. That language, which was intended to prohibit the involuntary cashout of pay status benefits and not to prohibit elective cashouts, has been the source of some confusion; the corresponding provision in the final regulation (§ 2617.6(b)) has been clarified accordingly.

The PBGC is aware that it may be difficult to purchase annuity contracts for small benefits that exceed $3,500 in value. Plans may of course provide for a lump sum cashout in such circumstances, provided that there is participant and spousal consent. Absent such consent, the plan administrator must find an insurer willing to provide the benefit in order to complete the distribution of assets in a standard termination.

Another commenter asked that the PBGC adopt a position on the use of participating annuity contracts consistent with that of the IRS. The PBGC has added a new paragraph (d) to § 2617.6 to define the circumstances in which the plan administrator may satisfy the annuity requirement through the purchase of participating annuities.

Section 2617.7—Facilitating plan sufficiency.

Section 2617.7 of the proposed regulation provided rules whereby a contributing sponsor could make a commitment, at any time prior to the filing of a standard termination notice, to provide sufficient assets to make the plan sufficient for benefit commitments. The final regulation has been modified to provide that the commitment must be for benefit liabilities (pursuant to PPA), and to permit members of the contributing sponsor's controlled group also to make such a commitment.

One commenter suggested that the contributing sponsor be permitted to make a sufficiency commitment at any time. The PBGC has not adopted this suggestion because the value of a sufficiency commitment is to be taken into account by the enrolled actuary in certifying that the plan is sufficient for benefit liabilities. That certification must be made as part of the standard termination notice in order for the termination to proceed; accordingly, the regulation requires that the sufficiency commitment be made by the time the standard termination notice is filed. The commenter was concerned that an already sufficient plan without such a commitment might become insufficient during the distribution period and thus be unable to terminate in a standard termination; in such circumstances, the contributing sponsor or a controlled group member may of course provide the necessary funds without having first provided a commitment.

Another commenter requested that the PBGC relax its absolute rule requiring bankruptcy court approval of the commitment if the person making the commitment is in bankruptcy. The commenter suggested that such approval might be unnecessary if some other person not in bankruptcy (*e.g.*, a principal shareholder) were to guarantee the commitment. The PBGC agrees and has provided in the final regulation (§ 2617.7(a)(2)(iii)) that bankruptcy court approval is not required if a non-bankrupt person unconditionally guarantees that the commitment will be met at or before the time distribution of assets is required in the standard termination.

Another commenter suggested that the PBGC include a provision permitting a principal owner "to waive a part of his benefit in order that all other participants would receive full benefits." The PBGC has decided that, in order to facilitate the termination of the plan and distribution of plan assets in a standard termination, a person who is a majority owner may agree to forego receipt of all or part of his or her benefit until the full plan benefits of all other plan participants have been satisfied. (In accordance with Code provisions and IRS regulations thereunder, if the present value of the benefit is more than $3,500, the spouse of the majority owner must consent to this alternative treatment of the benefit. See Treas. Reg.

§§ 1.411(d)-4 and 1.417(e)-1.) An election to forego payment of benefits is permitted merely to facilitate a standard termination; if assets become available when final distribution occurs, such assets must be used to satisfy the benefit liabilities of the majority owner before any assets may revert to the contributing sponsor.

For purposes of this provision, the definition of "majority owner" tracks that of "substantial owner" in ERISA section 4022(b)(5), except that it requires a different percentage ownership and does not include the 60-month look-back provision. The PBGC has defined "majority" to mean "50 percent or more" rather than "more than 50 percent" in order to permit use of this provision by two-person businesses in which ownership is evenly divided. The PBGC considered whether it should permit participants other than majority owners (in particular, substantial owners who are not majority owners) to elect such an alternative treatment of their benefit, but decided not to out of concern that they might be coerced into so electing. The "50% or more" test for majority owner status should effectively eliminate the risk of such coercion.

Sections 2617.8 and 2617.9—Filing with the PBGC; Computation of time.

Section 2617.8 of the proposed regulations contained rules for filing as well as rules for computing time limits. The PBGC has separated the filing and the time limit computation provisions into two sections (§§ 2617.8 and 2617.9).

The PBGC received six comments objecting to the rule that a document is not "filed" with the PBGC until it is received by the PBGC. Several commenters pointed out that most documents filed with the federal government are deemed filed when mailed, if properly addressed and postmarked by the United States Postal Service. The PBGC is aware of the general rule and has adopted it in a number of its regulations (see, e.g., 29 CFR § 2615.6). However, for purposes of these termination regulations, the PBGC believes the rule must be otherwise. As stated in the preamble to the proposed regulations, the use of the postmark date as the filing date, as in effect under the old termination regulations, proved difficult to administer. Moreover, PBGC's time for reviewing proposed terminations is shorter under the new statutory provisions. For these reasons, the PBGC has decided to define filing as the date of receipt.

Section 2617.10—Maintenance of plan records.

Section 2617.10 (proposed § 2617.9) requires the plan administrator or contributing sponsor to maintain certain plan records for a six-year period following the filing of the post-distribution certification. (The PBGC notes that most or all of the plan records required to be maintained under this provision already must be preserved and maintained for other purposes under section 107 of Title I of ERISA.) The exclusion in the proposed regulation for records with respect to participants in pay status for more than one year as of the termination date has been deleted. The PBGC developed this exclusion in recognition of the fact that many plans do not keep records for pay status participants indefinitely; it did not intend, however, to exclude such records if they were kept and were used in determining the participant's plan benefits as part of the termination process. Finally, the PBGC has added a new paragraph (c) (which retains the requirement in § 2617.23 of the PBGC's old termination regulation), providing that the records to be retained shall be made available (or submitted) to the PBGC upon request.

Section 2617.22 (proposed § 2617.12)—Notice of intent to terminate.

In § 2617.22(b), the PBGC added rules to specify the effect on the termination process if additional affected parties are discovered after issuance of the NOIT, in response to numerous inquiries since the proposed regulations were published. In § 2617.22(d), new paragraph (6) reflects comments that affected parties should be informed of the effect of a standard termination upon their accrual of benefits and service under the plan. Paragraphs (d)(7) and (8), which were not present in the proposed regulation, were added as part of an amendment to the PBGC's old termination regulation issued as an interim rule (56 FR 57980, November 15, 1991). Finally, paragraphs (d)(9) and (e), also not present in the proposed regulation, were the subject of an amendment to the old termination regulation that became final after notice and comment in June 1992 (57 FR 22167, May 27, 1992).

The PBGC has also added a new paragraph (f) providing, in the case of a spin-off/termination transaction, that the plan administrator give participants and beneficiaries in the ongoing portion of the original plan a notice describing the transaction. This notice must be provided no later than the time the plan administrator completes the issuance of the notice of intent to terminate. In order to have a valid termination in a spin-off/termination transaction involving asset reversions to the contributing sponsor, plan administrators must comply with the Implementation Guidelines jointly issued by the Departments of the Treasury and Labor and the PBGC; those guidelines require that benefits of participants be fully vested as of the date of termination, that benefits of participants covered by the ongoing portion of the original plan be annuitized, and that all participants be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated. Paragraph (f) implements the advance notice requirements of the guidelines.

Section 2617.23 (proposed § 2617.13)—Issuance of notices of plan benefits.

The PBGC added a new paragraph (c), dealing with the effect on the termination process if additional affected parties are discovered after issuance of the notices of plan benefits; these rules are similar to those noted above under § 2617.22.

Section 2717.24 (proposed § 2617.14)—Form and contents of notices of plan benefits.

Six commenters objected to the provision in proposed § 2617.14(c)(4) that, if the amount of benefit given in a notice is an estimate, "benefits paid will in no event be less than the estimate." Reasons given, variously, were that a plan administrator should be allowed to correct mathematical or clerical errors and that a participant should not get a windfall because of such mistake. The PBGC agrees and has revised § 2617.24(c)(4) accordingly.

One commenter suggested that the regulation should clarify that the benefit given in the notice is "the monthly income and not the lump sum value." The PBGC expects the plan administrator to give benefit information in the manner deemed to be most meaningful to participants, i.e., the monthly benefit (if a benefit may or must be paid as an annuity) and the estimated value of a lump sum benefit (if a benefit may or must be paid as a lump sum), and has not changed the regulation in this respect.

A number of comments were received concerning the notices to persons with benefits in pay status, as required under proposed § 2617.14(d). One commenter suggested that paragraph (d)(4), relating to additional information to be given to persons in pay status for one year or less, is burdensome and requested an explanation. Several commenters suggested that the notice to persons in pay status should be deleted as confusing and that persons in pay status less than one year should not be given an opportunity to request a

recalculation of their benefit. The PBGC believes that the statute requires that adequate benefit information be given to all participants and beneficiaries, including those in pay status, in order that errors may be corrected and to reassure them concerning the amount of their benefit. However, because many plan administrators do not keep full underlying data for persons who have been in pay status for some time, the final regulation relieves them (as did the proposed regulation) of the burden of providing such data for persons who have been in pay status for longer than one year.

Several commenters requested clarification of the information concerning lump sum benefits that proposed § 2617.14(e)(5) (§ 2617.24(e)(6) of the final regulation) required be given to persons who will be receiving their benefits in that manner. One suggested that the requirement that plan administrators explain how lump sums are calculated could be burdensome to plan administrators, and may also be excessive information for participants. Another suggested that the requirement (in proposed § 2617.14(e)(5)) for "an explanation of how the interest rate is used to calculate the lump sum" duplicates the requirement (also in proposed § 2617.14(e)(5)) for a statement that "the higher the interest rate, the smaller the lump sum amount." A third commenter suggested that additional information "describing the possible effect of the interest rate on future benefits would be appropriate."

The PBGC has not made any changes in response to these comments. Notice of how a lump sum is calculated is an essential part of the benefit information required under the statute. Further, it is the PBGC's experience that many people do not understand that there is an inverse relationship between the interest rate and the lump sum amount, and it is therefore appropriate to require a statement to that effect in the notices. Finally, the regulation sets minimum requirements for inclusion in the notices of plan benefits; the PBGC did not intend to preclude plan administrators from including any additional explanatory material, and encourages plan administrators to do so where appropriate.

Several commenters objected to the requirement in proposed § 2617.14(f)(1) that benefit information as to amount and form be given in the plan's "normal" form. They were concerned that, while the "normal" form under most plans is a qualified joint and survivor annuity for married participants, the plan administrator often does not know the marital status of a participant or the age of his or her spouse. The PBGC agrees with these comments and has changed § 2617.24(f)(1) to permit information concerning the amount and form of the benefit payable at normal retirement age to be given with respect to "any form permitted under the plan."

With respect to proposed § 2617.14(f)(2), one commenter read the provision to require benefit estimates for all optional forms of benefits and requested clarification as to whether early retirement benefit estimates need be given only with respect to the earliest retirement age. The PBGC did not intend to require that benefit estimates be given for any forms other than (1) the normal form (changed in § 2617.24(f)(1) to any permitted form), and (2) in the case of an early retirement benefit, the form payable at the earliest retirement age. The final regulation has been clarified accordingly.

Proposed § 2617.14(f)(3)–(5) required information concerning lump sum benefits to be given to participants who are not in pay status and for whom either the form or starting date of the benefit is not known. In general, such participants will not be close to retirement. One commenter noted that whether benefit amounts would be small enough to meet the $3,500 test for non-consensual cashout may depend on variables not known at the time the notice is given to these persons. Another suggested that participants should receive essentially the same information whether a lump sum cashout is consensual or nonconsensual. The PBGC agrees with these comments and has revised § 2617.24 (e) and (f) accordingly.

Finally, the PBGC notes that its use of the proposed termination date for certain purposes under this section serves merely to facilitate the preparation of the notices of plan benefits, and is not intended to alter the rules governing the determination of benefit liabilities.

Section 2617.25 (proposed § 2617.15)—Standard termination notice.

This section was revised to provide that the standard termination notice is to be filed on PBGC Form 500 (which includes Schedule EA–S, the enrolled actuary certification of sufficiency). Information similar to that required under proposed § 2617.15 (b) and (c) is now found in the forms, and those provisions are not included in the final regulation. New § 2617.25(b) ("Supplemental notice requirements"), along with certain of the information that is now in PBGC Form 500, was the subject of an amendment to the PBGC's old termination regulation that became final after notice and comment in June 1992 (57 FR 22167, May 27, 1992).

One commenter questioned the PBGC's authority to obtain information regarding reversions of residual assets to the contributing sponsor, arguing that the statute "only allows the PBGC to request such information as is necessary to determine whether adequate notices have been provided [and whether the] plan is sufficient for benefit [liabilities]." The PBGC disagrees; its role in overseeing the termination of sufficient plans extends beyond that suggested by the commenter. Plan terminations involving reversions of residual assets must comply with the PBGC/IRS/DOL Joint Implementation Guidelines as well as ERISA section 4044 and 29 CFR 2618. Thus, PBGC's role in enforcing the requirements of Title IV clearly requires that the PBGC obtain information regarding asset reversions.

Section 2617.26 (proposed § 2617.16)—PBGC action upon filing of standard termination notice.

A new paragraph (e) has been added to clarify that PBGC has continuing authority to suspend or nullify a proposed termination if it finds such action necessary to carry out the purposes of Title IV of ERISA.

One commenter suggested that the PBGC specify a time period within which it will acknowledge receipt of the standard termination notice. It has been the practice of the PBGC to issue an acknowledgement to the plan administrator upon receipt of the standard termination notice stating the date of receipt, and it intends to continue this practice. The PBGC has not experienced a problem in this regard, and does not believe it necessary to include any specific time limit for acknowledgement in the regulation.

Section 2617.27 (proposed § 2617.17)—Notice of noncompliance.

One commenter suggested that, to avoid uncertainty on the part of a plan administrator, a notice of noncompliance should be sent by certified mail and timed to arrive during the PBGC's 60-day review period. As with the preceding discussion, the PBGC is not adopting this suggestion because its experience has not shown a problem in this respect. The PBGC notes, however, that while it may issue a notice of noncompliance at or near the end of its 60-day (or extended) review period, it generally issues such notices early in the review period.

Proposed § 2617.17(c) provided that a plan administrator may appeal a notice of noncompliance under PBGC's regulation governing administrative

appeals (29 CFR part 2606, subpart D) and that filing an appeal stays the termination process until the PBGC issues its decision on the appeal. In the preamble to the proposed regulation, the PBGC asked for public comment on the appropriateness of the proposed automatic stay during the PBGC's administrative review process. The PBGC received only one comment, which noted with approval that the stay "preserves the termination process without adverse impact until the appeal is resolved"; the regulation has not been changed in this respect.

However, upon further consideration, the PBGC has changed § 2617.27(c) of the final regulation to provide that a plan administrator may request reconsideration of the determination, rather than requiring that an appeal be filed. The issues involved in review of a notice of noncompliance will ordinarily not be of sufficient complexity to warrant the need for the appeals procedure. The PBGC believes that the streamlined reconsideration process under Subpart C of Part 2606 will better serve the interests of the plan and affected parties.

Proposed § 2617.17(d) provided that, when a notice of noncompliance has been issued, the plan administrator must notify affected parties that "the plan is not going to terminate." One commenter suggested that this would be confusing if reinitiation of the termination were intended. Another suggested that the regulation clearly state that issuance of a notice of noncompliance will not prevent initiation of a new termination at any time after the notice is issued. The PBGC agrees with these comments, and has changed § 2617.27(d) to provide that the plan administrator may inform participants, when notifying them of a notice of noncompliance, that a new termination is contemplated.

Section 2617.28 (proposed § 2617.18)—Closeout of plan.

Paragraph (b) was revised to make clear that a determination of plan sufficiency for benefit liabilities must take into consideration all other liabilities of the plan. Such liabilities include, for example, actuarial fees, premiums owed to the PBGC, and other administrative expenses for which the plan is liable. The PBGC emphasizes that plans undergoing standard terminations are liable for premiums through and including the plan year in which assets are distributed; failure to pay such premiums constitutes a violation of Title IV of ERISA. Distribution of a plan's benefit liabilities in a standard termination without taking into account the plan's premium obligation may result in the invalidation of the standard termination or a civil action by the PBGC against the plan administrator in his or her personal capacity.

A number of commenters were concerned with the requirement in proposed § 2617.18(c) that the plan administrator give participants and beneficiaries, as part of a distribution through the purchase of annuities, "the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the benefits purchased." One commenter suggested that the obligation should be placed on the insurer rather than the plan administrator. Another stated that it is impossible to predict the amount of time necessary for an insurer to issue annuity certificates in any given case and suggested that the regulations permit their issuance in the ordinary course of business.

The PBGC agrees that the plan administrator would have access to a contract or annuity certificate only through the insurer, and recognizes that it often takes a considerable period of time for the insurer to provide such a contract or certificate. Nevertheless, the PBGC is concerned that participants and beneficiaries be given timely information concerning who is obligated to provide their annuity benefits and to whom they may go for answers concerning their benefits. Accordingly, the PBGC has revised § 2617.28 to provide, in paragraph (g), that evidence of the insurance may be provided either by the insurer or by the plan administrator. Further, such evidence may be in the form of a contract or certificate (as described above) or, if neither is available prior to the deadline for filing the post-distribution certification, a written notice from the plan administrator giving the necessary information. If the latter option (a written notice from the plan administrator) is used, each participant or beneficiary must be given the contract or certificate when available.

Paragraph (h) was revised to provide that the post distribution certification is to be filed on PBGC Form 501. Information similar to that required under proposed § 2617.18(f) is now found in the form and these provisions are not included in the final regulation.

The PBGC notes that the requirement of § 2617.28 to provide participants and beneficiaries (in the event of distribution through the purchase of irrevocable commitments) with a copy of the annuity contract or a notice or certificate of annuity contract, and to provide the PBGC (in all cases) with a post-distribution certification, are requirements that relate to, but are not part of, the distribution of all benefit liabilities in a standard termination. As the PBGC stated in its proposal to amend 29 CFR Part 2617, (56 FR 58014, 58015, November 15, 1991): "Although the written notice or certificate must be provided before the [post-distribution certification] can be filed and the termination thus completed, the distribution normally will occur before that notice or certificate is provided." Section 2617.28 (as well as § 2617.3(b)(5)) has accordingly been revised to clarify that the contract, notice, or certificate and the filing of the post-distribution certification are not part of the distribution.

One commenter suggested that the PBGC permit distribution of annuity contracts through the "bulk payment" method. Under this method, while the insurer is irrevocably committed to providing the benefits to participants, the insurer does so each month by sending a single check to the plan trustee who, in turn, makes payments to the individual participants. In the event the plan trustee for any reason does not perform the individual payment function, the insurer is obligated to make the payments itself (or to make arrangements with another person or entity to assume the individual payment function). The bulk payment method is permissible so long as the requisite "irrevocable commitment" exists, i.e., if the obligation has irrevocably passed from the plan to the insurer, and the plan's trustee is thus serving only as an agent of the insurer.

The PBGC has received many inquiries from plan administrators regarding how to complete the distribution of assets if one or more participants cannot be located. If the plan administrator has been unable to locate participants after having made a reasonable effort to do so, the plan administrator must purchase irrevocable commitments for each participant who has not been located. In the alternative, if the participant's benefit is valued at $3,500 or less and would otherwise be distributed in a lump sum, the plan administrator should deposit the monies that would otherwise be distributed into an individual interest-bearing account opened in the participant's name at a federally insured institution.

The PBGC, however, recognizes that plan administrators may confront difficulties in locating financial institutions willing to open individual interest-bearing accounts for missing participants, particularly where the benefit amounts are small. In the limited case where a plan administrator has made every reasonable effort to locate

missing participants and to locate institutions that are willing to open individual interest-bearing accounts for them, but is still unable to complete the distribution in this manner, then the use of a pooled interest-bearing account may be appropriate. If such an account is opened, it must be maintained by a fiduciary designated by the plan administrator who continues to have ongoing fiduciary obligations to those missing plan participants. The fiduciary must keep clear, up-to-date records of each participant's opening balance and earnings throughout the life of the account and must be available to make every reasonable effort to assist those participants who do come forward and claim their benefits. PBGC Opinion Letter 83–24 is modified in this respect.

Finally, the PBGC reminds plan administrators of the need to follow plan terms and all legal requirements in distributing plan assets. For example, each participant must be offered all optional forms of benefit for which he or she is eligible under the terms of the plan, and all required consents must be obtained. Moreover, in valuing benefits to be provided in a lump sum, the plan's actuary must use the interest rate or rate structures required by sections 411(a)(11) and 417(e)(3) of the Internal Revenue Code and the regulations thereunder. Failure to comply with any such requirements may result in invalidation of the standard termination.

Distress Terminations

Section 2616.2 Definitions.

The PBGC has made changes to the definitions of "affected party" and "participant" that parallel the changes discussed under the standard termination regulation.

The PBGC added a definition of "existing collective bargaining agreement" that is identical to the definition added to the standard termination regulation.

The definition of "proposed termination date" has been changed to parallel, generally, that in the standard termination regulation, which permits the plan administrator to propose a termination date in the standard termination notice that is later than the one proposed in the NOIT (but no later than 90 days after the date of issuance of the NOIT). In the preamble to the proposed regulation, the PBGC said that it was not permitting the plan administrator to change the proposed termination date because, in most distress terminations, the contributing sponsor and members of its controlled group are experiencing severe financial hardship and permitting a change in the proposed termination date would pose a significant risk to the PBGC (see 52 FR at 33324). One commenter objected, arguing that there may be circumstances in which the plan administrator may need to choose a later date to facilitate the plan termination, and noting that the PBGC could protect its interests by seeking establishment of a date it deems appropriate under section 4048 of ERISA. Upon reconsideration, and in view of the decreased time period within which a proposed termination date must fall under § 2616.22(a) (decreased from a 120-day period, i.e., 60–180 days after the NOIT, to a 30-day period, i.e., 60–90 days after the NOIT), the PBGC agrees that plan administrators in distress terminations should be given some flexibility, and has modified the regulation to provide that the plan administrator may change the proposed termination date in the distress termination notice to a later date, but no later than 90 days after the notice of intent to terminate except with PBGC's approval. The PBGC expects that it will rarely approve a later proposed termination date.

In the preamble to the proposed regulation, the PBGC solicited public comment on the issue of whether ERISA section 4048 continues to authorize the establishment of retroactive termination dates. Two commenters argued that retroactive termination dates should not be permitted, relying primarily on the increased emphasis, in SEPPAA, on advance notice to participants of a proposed termination date under ERISA section 4041. The PBGC has concluded that nothing in SEPPAA or PPA changed the rules, pursuant to ERISA section 4048, governing the establishment of retroactive termination dates to protect the insurance program. The PBGC intends to continue its long-standing policy (see 45 FR 80941, December 8, 1980) of seeking retroactive dates in appropriate circumstances.

The definitions of "date of distribution" and "insurer" are discussed in the standard termination portion of this preamble. Also, as in the standard termination regulation, the PBGC has added a number of other definitions to incorporate PPA changes, or for clarity or ease of reference.

Section 2616.3 Requirements for distress termination.

Section 2616.3(d)(1) restates the first statutory distress test (ERISA section 4041(c)(2)(B)(i)). That test (often referred to as the "liquidation test"), refers explicitly only to liquidations under federal bankruptcy or state insolvency law, and requires that the liquidation case, as of the proposed termination date, not be "dismissed" (a term of art under federal bankruptcy law, resulting in negation of the bankruptcy filing, and to be distinguished from a "closing" of a bankruptcy case; compare 11 U.S.C. 349 and 11 U.S.C. 350). The PBGC will consider cases under the liquidation test in which the liquidation was achieved through a foreclosure by secured creditors (as a result of which the contributing sponsor or controlled group member ceased operations and all of its assets were seized by such secured creditors) or through an assignment of all of the contributing sponsor's or controlled group member's assets for the benefit of creditors. The PBGC will also consider cases in which the liquidation was completed prior to the proposed termination date. In either case, however, the PBGC will find that the liquidation test is met only if it concludes, based on the circumstances of the specific case, that there is no indication that a principal purpose of the liquidation is to evade liability or otherwise to abuse the termination insurance program.

One commenter requested that the PBGC specify the period of time with respect to which it will determine whether the third distress test (*i.e.*, inability to continue in business; proposed and final § 2616.3(d)(3)) is met, and to develop standards of measurement to be used in making such determinations. The determinations made by the PBGC under the third distress test will necessarily be based on the facts and circumstances of each particular case. The PBGC does not believe it is appropriate, at least at this point, to develop specific time frames or standards of measurement.

Proposed § 2616.3(e) provided that, in determining whether a distress test is met, the PBGC would disregard any act or failure to act for the principal purpose of satisfying a distress test rather than for a reasonable business purpose. Two commenters objected to this provision, arguing generally that the PBGC lacks the statutory authority to make such determinations and that it is very difficult in many circumstances to determine the purpose of an action or failure to act, particularly where there may be legitimate business reasons to reduce labor costs, including pension costs. The PBGC has decided to retain this provision (paragraph (f) of the final regulation). A major purpose of the SEPPAA and PPA changes to Title IV of ERISA was to ensure that sponsors not be able to terminate underfunded pension plans unless they are financially unable to continue them. That purpose would be vitiated if

contributing sponsors and controlled group members were free to create an appearance of financial hardship in order to meet the statutory test; this provision helps to prevent that result.

Finally, a new paragraph (e) contains rules governing the interrelationship between the PBGC and a bankruptcy court in circumstances where both may be called upon to make distress findings regarding a particular plan termination. (The PBGC discussed these rules, and the reasons therefor, at 52 FR 38290, October 15, 1987.)

Section 2616.4 Administration of plan during pendency of termination proceedings.

Proposed § 2616.4(a) set forth certain restrictions that apply during the pendency of a distress termination proceeding. The PBGC has added one more restriction (§ 2616.4(b)(4)), precluding the plan administrator from providing loans to participants, because the benefit that the participant is entitled to receive following a distress termination, *e.g.*, the guaranteed benefit, may be less than the benefit amount serving as security for the loan. To preserve the plan's assets during the pendency of the termination process, the restrictions are generally in effect throughout that process beginning with the issuance of the first notice of intent to terminate; however, in the limited case of a plan sufficient for at least guaranteed benefits, the restrictions prohibiting distributions in furtherance of the termination, purchase of irrevocable commitments, and payment of benefits in lump sum form necessarily cease to be in effect once distribution of the plan's assets is permitted.

Proposed § 2616.4(c) provided that benefits that were not paid because of the cutback to estimated benefit amounts required by paragraph (b) of that section, if later required to be paid, must be paid with interest at the rate prescribed under 29 CFR Part 2610. The interest rate in Part 2610 is a rate established by statute for unpaid premiums; the interest rate more properly used for paying "past-due" benefits is that used by the PBGC for that purpose. Accordingly, § 2616.4(d)(2) provides for use of the interest rate or rates prescribed under § 2623.11(d).

Section 2616.5 Challenges to plan termination under collective bargaining agreement.

Provisions in this section parallel those in § 2617.5, discussed above, except that the time period within which notice must be given to the PBGC in order to require suspension of a distress termination ends upon issuance of a notice of inability to determine sufficiency or a distribution notice (rather than, as in the standard termination regulation, upon expiration of the PBGC's review period).

Section 2616.6 Annuity requirements.

Provisions in this section parallel those in § 2617.6, discussed above.

Proposed Section 2616.7 Contributing sponsor's commitment to make plan sufficient for guaranteed benefits.

Proposed § 2616.7 provided explicitly for a commitment by the contributing sponsor to make a plan sufficient for guaranteed benefits in a distress termination. Such commitments are extremely infrequent, and raise difficult valuation questions. The PBGC has deleted this provision from the final regulation, and will determine whether and when to accept such commitments on a case-by-case basis.

Sections 2616.7 and 2616.8 Filing with the PBGC; Computation of time.

These provisions, which were in § 2616.7 of the proposed regulation, parallel §§ 2617.8 and 2617.9 of the standard termination regulation discussed above. (While the distress termination process does not, in general, have the same kind of specific time limits for PBGC action as does the standard termination process, the PBGC often will need to act quickly to protect participants and premium payers, and thus has decided to define filing as the date of receipt, as under the standard termination regulation.)

Section 2616.9 Maintenance of plan records.

When the administrator of a plan in a distress termination receives a distribution notice from the PBGC because the plan is found to be sufficient for at least guaranteed benefits (§ 2616.26(c)), the plan administrator proceeds to close out the plan in a procedure that essentially parallels that followed in standard terminations. Thus, the PBGC does not routinely receive all plan or benefit records with respect to those plans during the termination proceedings; such records must be maintained in order that they will be available if needed (e.g., because the plan is selected for audit by the PBGC or because participants have questions regarding their benefits). Section 2616.9 (which tracks proposed § 2616.16(f) and final § 2617.10) contains this recordkeeping requirement and provides that the records shall be made available (or submitted) to the PBGC upon request. (The PBGC notes that most or all of the plan records required to be maintained under this provision already must be preserved and maintained for other purposes under section 107 of Title I of ERISA.)

Section 2616.22 (proposed § 2616.12) Notice of intent to terminate.

Paragraph (a)(3) requires that the notice of intent to terminate filed with the PBGC be on PBGC Form 600. Information similar to that required under proposed § 2616.12(e) is now found in the form and is not included in the final regulation.

Rules were added in paragraph (b), similar to those in § 2617.22(b), discussed above, concerning the effect on the termination process when affected parties are discovered after issuance of the NOIT.

A new paragraph (d)(5) (requiring that participants be informed of the effect of the termination on their benefit and service accruals), identical to § 2617.22(d)(6), was added for the same reasons discussed above in connection with that section. In addition, and for similar reasons, a new requirement was added (paragraph (d)(6)) requiring the plan administrator to advise participants of the expected level of plan sufficiency. Finally, proposed paragraph (d)(6) (now paragraph (d)(8)), requiring that retirees be told, where applicable, of the possibility of benefit reduction and recoupment, was revised to make the requirement applicable to non-retirees as well.

One commenter suggested that plan administrators be permitted to notify active employees of an intent to terminate the plan by posting the NOIT at locations usually reserved for employee notices, contending that "hand delivery of the notice is not required by statute and is unnecessary." The PBGC disagrees and has not made this change. ERISA section 4041(a)(2) requires that a written notice be provided "to each affected party." PBGC interprets the language in that section to require individual notice, particularly in view of the importance of plan termination to participants and beneficiaries.

A new paragraph (e), relating to spin-off/terminations, was added for the reasons discussed above under § 2617.22 of the standard termination regulation. (The PBGC recognizes that the rules governing participants in a spin-off/termination transaction are relevant in a distress termination only if the plan is sufficient for all benefit liabilities; while this is unlikely (since such plans would ordinarily terminate in a standard termination), it is not

Section 2616.23 (proposed § 2616.13) PBGC review of notice of intent to terminate.

One commenter suggested that the "tentative" finding of compliance to be issued under paragraph (b) by the PBGC should be final because "there is no need for a reconsideration and possible reversal of a determination with respect to whether a notice of intent to terminate is sufficient." The PBGC has not made this change because making a "tentative" determination permits the PBGC to make earlier (albeit only "tentative") determinations and, thereby, to facilitate faster processing in most cases.

Paragraph (d) of this section was revised by eliminating the list (in proposed § 2616.13(d)(1)–(3)) of specific information that might be requested by the PBGC in connection with possible institution of proceedings under ERISA section 4042. The information that the PBGC may need will vary from case to case, and it is unnecessary to specify the information in advance in the regulation.

In paragraph (e), the right to appeal the PBGC's determination that the notice of intent to terminate was not properly issued has been changed to a right to reconsideration. (As noted below, this same change was made regarding a PBGC determination that other distress termination requirements, such as meeting the distress tests, were not met.) Uncertainty as to whether a plan may terminate in a distress termination may profoundly affect the financing of an ongoing business or impede a plan of reorganization or liquidation. The time needed to complete the more sophisticated review of the appeals procedure, involving review by a three-person board and the opportunity to appear in person and to present witnesses, may be substantial. The streamlined reconsideration process should facilitate prompt resolution of the status of the termination.

One commenter noted that the standard termination regulation (proposed § 2617.17(d); final § 2617.27(d)) required the plan administrator to inform affected parties in the event the PBGC issues a notice of noncompliance in a standard termination, and suggested that a similar notification should be provided if the PBGC finds that the requirements for a distress termination were not met. The PBGC agrees and has added a new paragraph (f) that parallels § 2617.27(d).

Section 2616.24 (proposed § 2616.14) Distress termination notice.

This section was revised to provide that the distress termination notice is to be filed on PBGC Form 601 (including Schedule EA–D, the enrolled actuary certification). Information similar to that required under proposed § 2616.14(b)–(d) is now found in the form package and those provisions are not included in the final regulation.

Section 2616.25 (proposed § 2616.15) PBGC determination of compliance with requirements for distress termination.

One commenter suggested that the regulation should include a "time frame" within which the PBGC must issue its determination that the distress termination requirements are satisfied. The PBGC believes it would be impractical to establish any meaningful time frames because the time that will be needed to make distress determinations will vary widely based on the facts and circumstances of a particular case, particularly given the many variables that must be considered under the different distress criteria. However, the PBGC will attempt to make its distress determinations as expeditiously as circumstances permit.

The same commenter requested that the regulations be expanded to require that PBGC "provide copies of the plan administrator's filings in support of the proposed distress termination." The PBGC has not adopted this suggestion because disclosure of material filed with the PBGC is determined in accordance with the rules in the PBGC's Freedom of Information Act regulation, 29 CFR Part 2603.

Finally, for the reasons discussed above under § 2616.23, the PBGC has changed (in paragraph (d)) the right to appeal its determinations that the requirements for a distress termination were not met to a right to request reconsideration, and has added a new paragraph (e) requiring the plan administrator to provide notice to affected parties if the PBGC determines that the requirements for a distress termination are not met.

Section 2616.26 (proposed § 2616.16) PBGC determination of plan sufficiency/insufficiency.

Proposed paragraph (e) provided a special rule for plans that would be sufficient for guaranteed benefits only if the plan collects all or a portion of a claim for due and unpaid employer contributions. In the proposed regulation, such plans were treated as insufficient for guaranteed benefits (*i.e.*, they would be placed into trusteeship by the PBGC) if the enrolled actuary did not certify that the necessary amount would be collected by the proposed distribution date. The PBGC deleted this special rule from the final regulation. It is the PBGC, rather than the enrolled actuary, that is responsible for determining whether and when to issue a notice of inability to determine sufficiency or a distribution notice. In making this determination, the PBGC will take into account the expected date(s) and amount(s) of any collection of due and unpaid employer contributions (or other plan receivables).

Section 2616.27 Notices of benefit distribution.

This section is new; its provisions parallel, or cross-reference, the rules in §§ 2617.22 (d)(8), (d)(9), and (e), 2617.23, and 2617.24 of the standard termination regulation. As noted above in the discussion of time limits, the proposed regulation did not include this step in all cases in which the plan is sufficient for at least guaranteed benefits (and thus closes out in the same manner as in a standard termination).

Section 2616.29 (proposed § 2617.18) Closeout of plan.

Paragraph (a) of this section cross-references and parallels the provisions of § 2617.28 (c), (e), and (f) of the standard termination regulation, except that the 180-day period for completing the distribution of plan assets is measured from the date issuance of the notices of benefit distribution is completed (rather than, as in the standard termination regulation, from expiration of the PBGC's review period).

Paragraph (b) (proposed § 2616.18(c)) provides for a post-distribution certification (which parallels § 2617.28(h)) to be filed by any plan administrator distributing assets pursuant to a distribution notice issued by the PBGC. The PBGC has developed a new PBGC Form 602 to facilitate plan administrators' certifications in these cases.

E.O. 12291 and Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation ("PBGC") has determined that this final rule is not a "major rule" for the purposes of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability

of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These regulations merely implement the statutory requirements and procedures governing voluntary terminations of pension plans.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Traditionally, pension plans with fewer than 100 participants have been treated as small plans. Seventy-five percent of these plans are defined contribution plans and are not subject to PBGC regulations. Only about 51,000 small plans are covered by the PBGC's single-employer insurance program. Of these, about 15 percent (7750 plans), or about 3.5 percent of all small pension plans, terminate each year and are subject to these regulations.

Paperwork Reduction Act

The collection of information requirements in this final rule have been approved by the Office of Management and Budget under control number 1212–0036 with an expiration date of January 31, 1993. As noted above, elsewhere in today's **Federal Register** the PBGC is publishing a notice of request for extension of OMB approval of the collection of information requirements contained in this rule and in the revised forms and instructions.

List of Subjects in 29 CFR Parts 2616 and 2617

Employee benefit plans, Pension insurance, Pensions, and Reporting requirements.

In consideration of the foregoing, the PBGC is revising 29 CFR parts 2616 and 2617 of subchapter C of chapter XXVI, title 29 of the Code of Federal Regulations as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

2616.1 Purpose and scope.
2616.2 Definitions.
2616.3 Requirements for a distress termination.
2616.4 Administration of plan during pendency of termination proceedings.
2616.5 Challenges to plan termination under collective bargaining agreement.
2616.6 Annuity requirements.
2616.7 Filing with the PBGC.
2616.8 Computation of time.
2616.9 Maintenance of plan records.

Subpart B—Distress Termination Process

2616.21 Purpose and scope.
2616.22 Notice of intent to terminate.
2616.23 PBGC review of notice of intent to terminate.
2616.24 Distress termination notice.
2616.25 PBGC determination of compliance with requirements for distress termination.
2616.26 PBGC determination of plan sufficiency/insufficiency.
2616.27 Notices of benefit distribution.
2616.28 Verification of plan sufficiency prior to closeout.
2616.29 Closeout of plan.

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

Subpart A—General Provisions

§ 2616.1 Purpose and scope.

(a) Purpose. This part sets forth the rules and procedures for terminating a single-employer pension plan in a distress termination under the Employee Retirement Income Security Act of 1974, as amended. Under the Act, a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. This part supersedes previous PBGC regulations in 29 CFR Part 2616 and includes rules governing the notice of intent to terminate for distress terminations, as well as other substantive and procedural rules pertaining to those terminations. (The rules for standard terminations are included in Part 2617 of this subchapter.) Subpart A of this part contains general rules relating to distress terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a distress termination.

(b) *Scope.* This part applies to the termination of any single-employer plan covered under section 4021(a) of the Act and not excluded by section 4021(b) for which a notice of intent to terminate in a distress termination is issued on or after January 28, 1992.

§ 2616.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Affected party means the PBGC and, with respect to a terminating plan—

(1) Each participant;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of the Act;

(4) Each employee organization that currently represents any group of participants; and

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate.

In connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to the plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR part 2612.

Date of distribution means—(1) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(2) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

Distress termination means the voluntary termination, in accordance with section 4041(c) of the Act and this part, of a single-employer plan.

Distress termination notice means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of the Act and § 2616.24. PBGC Form 601 (including Schedule EA–D) is the distress termination notice.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 2616.26(c) of this

part upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Existing collective bargaining agreement means a collective bargaining agreement that—

(1) By its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and

(2) Has not been made inoperative by a judicial ruling.

When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms may continue to apply by operation of law.

Guaranteed benefit means a benefit that is guaranteed by the PBGC under section 4022 (a) and (b) of the Act and parts 2613 and 2621 of this chapter.

Insurer means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Notice of benefit distribution means the notice to each participant and beneficiary required by § 2616.27 of this part describing the benefit to be distributed to him or her.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2616.22 of this part.

Participant means—(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

PBGC means the Pension Benefit Guaranty Corporation.

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the distress termination notice. A proposed termination date specified in the notice of intent to terminate may not be earlier than the 60th day, nor later than the 90th day, after the issuance of the notice of intent to terminate. A proposed termination date specified in the distress termination notice may not be earlier than the proposed termination date specified in the notice of intent to terminate, or (except with PBGC approval) later than the 90th day after the issuance of the notice of intent to terminate.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Spin-off/termination means a splitting of a single defined benefit plan into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer.

Sufficient for benefit liabilities means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of the Act.

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a)(17) of the Act.

Termination date means the date established pursuant to section 4048(a) of the Act. The termination date is the date for determining guaranteed benefits and benefit liabilities.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of the Act and Part 2618 of this subchapter.

§ 2616.3 Requirements for a distress termination.

(a) *Exclusive means of voluntary plan termination.* Unless a plan is able to discharge all of its obligations for benefit liabilities and otherwise satisfy the requirements for a standard termination set forth in part 2617 of this subchapter, it may be voluntarily terminated by the plan administrator only if all of the requirements for a distress termination set forth in paragraph (b) of this section are satisfied.

(b) *Requirements.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 2616.22 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 2616.24 no later than 120 days after the proposed termination date; and

(3) The PBGC determines that the contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (d) of this section.

(c) *Effect of failure to satisfy requirements.* (1) Except as provided in paragraph (c)(2) of this section, if the plan administrator does not satisfy all of the requirements of paragraph (b) of this section, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. A plan administrator who still desires to terminate the plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (b)(1) or (b)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(3) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

(d) *Distress criteria.* A contributing sponsor and each member of its controlled group shall satisfy at least one (but not necessarily the same one)

of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar law of a State or political subdivision of a State, or a case described in paragraph (d)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (d)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(e) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (d)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the sponsor or controlled group member meets the distress test in paragraph (d)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (d)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and non-appealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (d)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (d)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(f) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the criteria contained in paragraph (d) of this section, rather than for a reasonable business purpose, the PBGC shall disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

§ 2616.4 Administration of plan during pendency of termination proceedings.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, and investing plan assets, in accordance with plan provisions and applicable law and regulations.

(b) *Prohibitions after issuing notice of intent to terminate.* The plan administrator shall not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to § 2616.29, the plan administrator shall not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Limitation on benefit payments on or after proposed termination date.* Beginning on the proposed termination date, the plan administrator shall reduce benefits to the level determined under part 2623 of this subchapter. For purposes of applying part 2623, the term "section 4041(a) date of termination" used therein shall be replaced by the term "proposed termination date."

(d) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 2616.23(c) or § 2616.25(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions described in paragraph (b)(2)–(b)(4) of this section shall cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 2616.23(e) and 2616.25(d) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (c) of this section shall be due and payable as of the effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 2623.11(d) of this subchapter.

(e) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency pursuant to § 2616.28(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency pursuant to § 2616.28(d), the prohibitions in paragraph (b) of this section shall apply in accordance with § 2616.28(e).

§ 2616.5 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.* (1) If the PBGC is advised, before issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to § 2616.26(b) or (c), that a formal challenge to the termination (as described in paragraph (b) of this section) has been initiated, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing. If the PBGC is advised of such a challenge after the issuance of such notice but before the termination procedure is concluded pursuant to this part, the PBGC may suspend the termination proceeding

and, if it does, shall so advise the plan administrator in writing.

(2) The following rules shall apply during a period of suspension beginning on the date of the PBGC's written notification to the plan administrator and ending with the final resolution of the challenge to the termination:

(i) The suspension shall stay the issuance by the PBGC of any notice of inability to determine sufficiency or distribution notice or, if any such notice was previously issued, shall stay its effectiveness;

(ii) The plan administrator shall comply with the prohibitions in § 2616.4; and

(iii) The plan administrator shall file a distress termination notice with the PBGC in the manner and within the time specified in § 2616.24.

(b) *Formal challenge to termination.* For purposes of this section, a formal challenge to a plan termination is initiated when any of the following actions is taken, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or

(2) The commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(c) *Resolution of challenge.* Immediately upon the final resolution (as described in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, and shall provide the PBGC with a copy of the award or order, if any. If the validity of the proposed termination has been upheld, the plan administrator also shall advise the PBGC whether the plan administrator wishes to continue the proposed termination.

(1) *Challenge sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. In this event, § 2616.4(d) shall apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and the following rules shall apply:

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) The PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(2)(i) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 2616.24(c);

(iv) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding; and

(v) Any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify.

(d) *Final resolution of challenge.* For purposes of this section, a formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(e) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2616.6 Annuity requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, when a plan is closed out under § 2616.29, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating, nonsurrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions to annuity requirement.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if the plan provides for an alternative form of distribution and either paragraph (b)(1) or (b)(2) of this section applies:

(1) The participant is not in pay status as of the date of distribution, and the present value of the participant's total benefit under the plan, including amounts previously distributed to the participant, is $3,500 or less, determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The date used for determining such interest rate or rates shall be—

(i) The date set forth in the plan for such purpose, provided that the plan provision is in accord with section 417(e)(3) of the Code and the regulations thereunder (substituting "date of distribution" for "annuity starting date" wherever used in the plan); or

(ii) If the plan does not provide for such a date, the date of distribution.

(2) The participant elected the alternative form of distribution in writing, with the written consent of his or her spouse, in accordance with the requirements of sections 401(a)(11), 411(a)(11), and 417 of the Code and the regulations thereunder.

(c) *Optional benefit forms.* Except as permitted by sections 401(a)(11), 411(d)(6), and 417 of the Code and the regulations thereunder, an annuity contract purchased to satisfy the annuity requirement shall preserve all applicable benefit options provided under the plan as of the termination date.

(d) *Participating annuities.* (1) *General rule.* Notwithstanding the requirement of paragraph (a) of this section that an annuity contract be nonparticipating, a participating annuity contract may be purchased to satisfy the annuity requirement if the plan is sufficient for all benefit liabilities and—

(i) All benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer;

(ii) In no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and

(iii) As provided in paragraph (d)(2) of this section, no amount of residual assets to which participants are entitled will be used to pay for the participation feature.

(2) *Plans with residual assets.* If all or a portion of the residual assets of a plan will be distributed to participants—

(i) The additional premium for the participation feature must be paid from

the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor; and

(ii) If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

§ 2616.7 Filing with the PBGC.

(a) *Date of filing.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received no later than 4:00 p.m. on a day other than Saturday, Sunday, or a Federal holiday. Documents received after 4:00 p.m. or on Saturday, Sunday, or a Federal holiday shall be deemed filed on the next regular business day.

(b) *How to file.* Any document to be filed under this part may be delivered by mail or by hand to: Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street, NW., Washington, DC 20006–1806.

§ 2616.8 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Notwithstanding the preceding sentence, a proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

§ 2616.9 Maintenance of plan records.

Either the contributing sponsor or the plan administrator of a terminating plan that closes out in accordance with § 2616.29 pursuant to a distribution notice issued under § 2616.26(c) shall maintain and preserve all records used to compute benefits with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date in accordance with the following rules:

(a) The records to be maintained and preserved are those used to compute the benefit for purposes of distribution to each individual in accordance with § 2616.29 and include, but are not limited to, the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of benefits.

(b) All records subject to this section shall be preserved for six years after the date the post-distribution certification required under § 2616.29(b) is filed with the PBGC.

(c) The contributing sponsor or plan administrator, as appropriate, shall make records subject to this section available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after receipt of the PBGC's written request therefor (or such other period as may be specified in such written request).

Subpart B—Distress Termination Process

§ 2616.21 Purpose and scope.

This subpart describes in detail the distress termination process. Sections 2616.22 and 2616.24 prescribe the rules for the two statutory notices that plan administrators must issue in a distress termination. The first, the "notice of intent to terminate," is issued to all affected parties to begin the termination process. The second, the "distress termination notice," is issued only to the PBGC. Sections 2616.23, 2616.25, and 2616.26 cover the PBGC's review of the proposed termination and the actions that the PBGC may take with respect to it. Sections 2616.27, 2616.28, and 2616.29 apply only to plans that are sufficient for at least guaranteed benefits and describe the actions the plan administrator must take to close out the plan.

§ 2616.22 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party a written notice of intent to terminate.

(2) The plan administrator shall issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC shall contain all of the information specified in paragraph (d) of this section.

(4) The notice to the PBGC shall be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraphs (a)(1) or (a)(2) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time periods will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance.* (1) *Method.* The plan administrator shall issue the notice of intent to terminate individually to each affected party. The notice to the PBGC shall be filed in accordance with § 2616.7. The notice to each of the other affected parties shall be either hand delivered or delivered by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to the PBGC on the date on which it is filed and to any other affected party on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice to affected parties other than the PBGC.* The plan administrator shall include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date.

(5) A statement that benefit and service accruals will continue until the date of termination or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of the Act;

(6) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(7) A brief description of what benefits are guaranteed by the PBGC (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled

under the terms of the plan in excess of guaranteed benefits; and

(8) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to parts 2621 and 2623 of this subchapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to Part 2623 of this subchapter).

(e) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction, the plan administrator shall provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 2616.23 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Shall determine whether the notice was issued in compliance with § 2616.22; and

(2) Shall advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 2616.22, it shall notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 2616.24, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 2616.22 (except for requirements that the PBGC elects to waive under § 2616.3(c)(2) with respect to the notice filed with the PBGC), the PBGC shall notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of the Act, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of the Act.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in subpart C of part 2606 of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 2616.22(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this paragraph shall be provided in the manner described in § 2617.27(d)(2).

§ 2616.24 Distress termination notice.

(a) *General rule.* The plan administrator shall file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA–D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Participant and benefit information.* (1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA–D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator shall file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 2616.25(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of the Act. The plan administrator shall submit any information requested under this paragraph within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

§ 2616.25 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Based on the information contained and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA–D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC shall determine whether the requirements for a distress termination set forth in § 2616.3(b) have been met and shall notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the

requirements of § 2616.3(b) have been satisfied, it shall so advise the plan administrator and shall also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 2616.24(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 2616.3(b) have not been met, it shall notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 2616.3(c)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC shall advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in subpart C of part 2606 of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 2616.22(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this paragraph shall be provided in the manner described in § 2617.27(d)(2).

§ 2616.26 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 2616.24 (b)(1) or (c), the PBGC shall determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it shall issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator shall continue to administer the plan under the restrictions imposed by § 2616.4; and

(2) The termination shall be completed under section 4042 of the Act.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC shall issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 2616.27;

(2) To close out the plan in accordance with § 2616.29;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 2616.29(b); and

(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 2616.9.

§ 2616.27 Notices of benefit distribution.

(a) *General rules.* When a distribution notice is issued by the PBGC pursuant to § 2616.26(c), the plan administrator shall—

(1) No later than 60 days after receiving the distribution notice, issue a notice of benefit distribution in accordance with the rules described in paragraphs (c) and (d) of this section to each person (other than any employee organization or the PBGC) who is an affected party as of the termination date (and, in the case of a spin-off/termination transaction, each person who is, as of the termination date, a participant in the original plan and covered by the ongoing plan); and

(2) No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of benefit distribution after the expiration of the time period specified in paragraph (a)(1) of this section, the failure to issue the notices of benefit distribution to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of benefit distribution in the form and containing the information specified in paragraph (d) of this section.

(c) *Issuance.* (1) *Method.* The plan administrator shall issue a notice of benefit distribution individually to each person, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of benefit distribution is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Form and content of notices.* The plan administrator shall provide notices of benefit distribution in the form described in § 2617.24(a) and (b) of this subchapter and shall include in each—

(1) The information described in § 2617.24(c) of this subchapter;

(2) The information described in § 2617.24(d), (e), or (f) of this subchapter, as applicable (replacing the term "plan benefits" with "Title IV benefits" and "proposed termination date" with "termination date".

(3) A statement that, after plan assets have been distributed to provide all of the Title IV benefits payable with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends; and

(4) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of distribution is issued, a statement that the affected party to whom the notice is directed will be notified of the name and address of the insurer or insurers from whom annuities may be purchased at a later date (but no

later than 45 days before the date of distribution).

(e) *Supplemental notice requirements.* (1) The plan administrator shall issue a supplemental notice (or notices) of distribution to each person in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of distribution is issued; or

(ii) The plan administrator included in the notice of distribution the name or names of the insurer or insurers from whom he or she intends to purchase the irrevocable commitments, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraphs (b) and (c) of this section no later than 45 days before the date of distribution and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 2616.28 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under § 2616.29, the plan administrator shall verify whether the plan's assets are still sufficient to provide for benefits at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit liabilities. If the plan administrator finds that the plan is no longer able to provide for benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, shall apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan is no longer sufficient for guaranteed benefits, the plan administrator shall promptly notify the PBGC in writing of that fact and shall take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice shall be void, and the PBGC shall—

(i) Issue the plan administrator a notice of inability to determine sufficiency in accordance with § 2616.26(b); and

(ii) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit liabilities and guaranteed benefits under the plan, valued in accordance with part 2619, subpart C, of this subchapter as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it shall so notify the plan administrator in writing, and the distribution notice shall remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator shall immediately notify the PBGC in writing of this fact, but shall continue with the distribution of assets in accordance with § 2616.29.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section shall apply, except that the guaranteed benefits shall be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator shall (except to the extent the PBGC otherwise directs) be subject to the prohibitions in § 2616.4(b).

§ 2616.29 Closeout of plan.

(a) *General rules.* (1) *Distribution.* If a plan administrator receives a distribution notice from the PBGC pursuant to § 2616.26(c) and neither the plan administrator nor the PBGC makes the finding described in § 2616.28(b) or (d), the plan administrator shall distribute plan assets in accordance with §§ 2616.6 and 2617.28(c), (e) and (f) of this subchapter no earlier than the 61st day and no later than the 180th day following the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 2616.27(a). For purposes of applying § 2617.28(e)(1)(i), the phrase "the date that the plan administrator files the standard termination notice with the PBGC" shall be replaced by "the date that the plan administrator completes issuance of the notices of benefit distribution."

(2) *Notice of annuity contract.* If any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with § 2617.28(g).

(b) *Post-distribution certification.* Within 30 days after the completion of the distribution of plan assets in accordance with paragraph (a)(1) of this section, the plan administrator shall file with the PBGC a PBGC Form 602, Post-Distribution Certification for Distress Terminations, that has been completed in accordance with the instructions thereto.

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

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Appendix to Part 2617—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

Subpart A—General Provisions

§ 2617.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules and procedures for terminating a single-employer pension plan in a standard termination under the Employee Retirement Income Security Act of 1974, as amended. Under the Act, a single-employer plan may be voluntarily terminated only in a "standard" or a "distress" termination, and then only if the termination satisfies the statutory requirements for the type of termination sought. This part combines previous PBGC regulations in 29 CFR Parts 2616 and 2617, with appropriate changes in the rules for standard terminations. (The rules for distress terminations are included in Part 2616 of this subchapter.) Subpart A of this part contains the various general

rules and requirements relating to standard terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a standard termination.

(b) *Scope.* This part applies to the termination of any single-employer plan covered under section 4021(a) of the Act and not excluded by section 4021(b) for which a notice of intent to terminate in a standard termination is issued on or after January 28, 1993.

§ 2617.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Affected party means, with respect to a terminating plan—

(1) Each participant;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in sections 206(d)(3) of the Act;

(4) Each employee organization that currently represents any group of participants; and

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate.

In connection with any notice required under this part, if an affected party has designated in writing another person to receive the notice, any reference to the affected party shall be deemed to refer to the designated person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means the person entitled to receive a deduction under section 404(a) of the Code (or that would be entitled to receive a deduction except for the limitations in section 404(a)) for contributions required to be made to a plan under section 302 of the Act and section 412 of the Code.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined in accordance with 29 CFR Part 2612.

Date of distribution means—

(1) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(2) For benefits provided other than through the purchase of irrevocable commitments, the date on which full plan benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

Existing collective bargaining agreement means a collective bargaining agreement that—

(1) By its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and

(2) Has not been made inoperative by judicial ruling. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms continue to apply by operation of law.

Insurer means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more of—

(1) An unincorporated trade or business,

(2) The capital interest or the profits interest in a partnership, or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation. For this purpose, the constructive ownership rules of section 414(b) and (c) of the Code shall apply.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Notice of intent to terminate means the notice to affected parties advising each of a proposed plan termination, as required by section 4041(a)(2) of the Act and § 2617.22 of this part.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to section 4041(b)(2)(C) of the Act and § 2617.27 of this part advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by section 4041(b)(2)(B) of the Act and § 2617.23 and 2617.24 of this part describing his or her plan benefits.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

PBGC means the Pension Benefit Guaranty Corporation.

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

Plan benefits means the benefits to which of a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's accrued benefit under the plan as of that date. Each participant's "plan benefits" equals that participant's "benefit liabilities," and the sum of all "plan benefits" equals the plan's "benefit liabilities."

Proposed distribution date means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st

day, nor later than the 240th day, following the day on which the plan administrator files a standard termination notice with the PBGC.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice. If a plan terminates in a standard termination, this date becomes the "termination date." A proposed termination date may not be earlier than the 60th day, nor later than the 90th day, after the issuance of the notice of intent to terminate.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of the Act) that is not a multiemployer plan (as defined in section 4001(a)(3) of the Act).

Spin-off/termination means a splitting of a single defined benefit plan into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer.

Standard termination means the voluntary termination, in accordance with section 4041(b) of the Act and this part, of a single-employer plan that is able to provide for all its benefit liabilities when plan assets are distributed.

Standard termination notice means the notice filed with the PBGC pursuant to section 4041(b)(2)(A) of the Act and § 2617.25 of this part advising the PBGC of a proposed standard termination. PBGC Form 500 (including Schedule EA–S) is the standard termination notice.

§ 2617.3 Requirements for a standard termination.

(a) *Exclusive means of voluntary plan termination.* Unless all the requirements for a distress termination set forth in section 4041(c) of the Act and Part 2616 of this subchapter are satisfied, a plan may be voluntarily terminated by the plan administrator only if all of the requirements for a standard termination set forth in paragraph (b) of this section are satisfied.

(b) *Requirements.* A plan may be terminated in a standard termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 2617.22 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a standard termination notice with the PBGC in accordance with § 2617.25 no later than 120 days after the proposed termination date;

(3) The plan administrator issues notices of plan benefits to plan participants and beneficiaries in accordance with §§ 2617.23 and 2617.24 no later than the date that the standard termination notice is filed with the PBGC;

(4) The PBGC does not issue a notice of noncompliance to the plan administrator pursuant to § 2617.27; and

(5) The plan administrator distributes plan assets in accordance with § 2617.28(c) within the 180-day (or extended) distribution period under § 2617.28 (a), (e), and (f), in satisfaction of all benefit liabilities under the plan.

(c) *Effect of failure to satisfy requirements.* If the plan administrator does not satisfy all of the requirements of paragraph (b) of this section, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. A plan administrator who still desires to terminate the plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

§ 2617.4 Administration of plan during pendency of termination proceedings.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, investing plan assets, and making loans to qualified participants, in accordance with plan provisions and applicable law and regulations.

(b) *Prohibitions after issuance of notice of intent to terminate.* Except as provided in paragraph (c) of this section, during the period beginning on the first day the plan administrator issues a notice of intent to terminate and ending on the last day of the PBGC's 60-day (or extended) review period, as described in § 2617.26(a), the plan administrator shall not—

(1) Distribute plan assets pursuant to or in furtherance of the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Exceptions.* During the period set forth in paragraph (b) of this section, the plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments from an insurer or in a form other than an annuity if—

(1) The participant has separated from active employment;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for benefit liabilities.

(d) *Effect of notice of noncompliance.* If the PBGC issues a notice of noncompliance pursuant to § 2617.27, the prohibitions described in paragraphs (b)(2) and (b)(3) of this section shall cease to apply—

(1) Upon expiration of the period during which reconsideration may be requested under § 2617.27(c) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(2) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

§ 2617.5 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.* (1) If the PBGC is advised, before the 60-day (or extended) period specified in § 2617.26 ends, that a formal challenge to the plan termination (as described in paragraph (b) of this section) has been initiated, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing. If the PBGC is advised of such a challenge after the 60-day (or extended) period specified in § 2617.26 ends but before the termination procedure is concluded pursuant to this part, the PBGC may suspend the termination proceeding and, if it does, shall so advise the plan administrator in writing.

(2) The following rules shall apply during a period of suspension pursuant to paragraph (a) of this section beginning on the date of the PBGC's written notification to the plan administrator and ending with the final resolution of the challenge to the termination:

(i) The running of all time periods specified in the Act or this part relevant to the termination shall be suspended; and

(ii) The plan administrator shall comply with the prohibitions in § 2617.4.

(b) *Formal challenge to termination.* For purposes of this section, a formal challenge to a plan termination is initiated when any of the following actions is taken, asserting that the termination would violate the terms and

conditions of an existing collective bargaining agreement:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or

(2) The commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(c) *Resolution of challenge.* Immediately upon the final resolution (as described in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, and shall provide the PBGC with a copy of the award or order, if any. If the validity of the proposed termination has been upheld, the plan administrator also shall advise the PBGC whether the plan administrator wishes to continue the proposed termination.

(1) *Challenge sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan.

(2) *Termination sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and the following rules shall apply:

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding; and

(iv) Any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify.

(d) *Final resolution of challenge.* For purposes of this section, a formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(e) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of the Act.

§ 2617.6 Annuity requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, when a plan is closed out under § 2617.28, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating, nonsurrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions to annuity requirement.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if the plan provides for an alternative form of distribution and either paragraph (b)(1) or (b)(2) of this section applies:

(1) The participant is not in pay status as of the date of distribution, and the present value of the participant's total benefit under the plan, including amounts previously distributed to the participant, is $3,500 or less, determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The date used for determining such interest rate or rates shall be—

(i) The date set forth in the plan for such purpose, provided that the plan provision is in accord with section 417(e)(3) of the Code and the regulations thereunder (substituting "date of distribution" for "annuity starting date" wherever used in the plan); or

(ii) If the plan does not provide for such a date, the date of distribution.

(2) The participant elected the alternative form of distribution in writing, with the written consent of his or her spouse, in accordance with the requirements of sections 401(a)(11), 411(a)(11), and 417 of the Code and the regulations thereunder.

(c) *Optional benefit forms.* Except as permitted by sections 401(a)(11), 411(d)(6), and 417 of the Code and the regulations thereunder, an annuity contract purchased to satisfy the annuity requirement shall preserve all applicable benefit options provided under the plan as of the termination date.

(d) *Participating annuities.* (1) *General rule.* Notwithstanding the requirement of paragraph (a) of this section that an annuity contract be nonparticipating, a participating annuity contract may be purchased to satisfy the annuity requirement if—

(i) All benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer;

(ii) In no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and

(iii) As provided in paragraph (d)(2) of this section, no amount of residual assets to which participants are entitled will be used to pay for the participation feature.

(2) *Plans with residual assets.* If all or a portion of the residual assets of a plan will be distributed to participants—

(i) The additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor; and

(ii) If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

§ 2617.7 Facilitating plan sufficiency.

(a) *Commitment to make plan sufficient.* (1) *General rule.* At any time before a standard termination notice is filed with the PBGC, in order to enable the plan to terminate in that standard termination, a contributing sponsor or a member of a controlled group of a contributing sponsor may make a commitment to contribute any additional sums necessary to make the plan sufficient for all benefit liabilities. Any such commitment shall be treated as a plan asset for all purposes under this part. A sample commitment is included in the appendix to this part.

(2) *Requirements for valid commitment.* A commitment to make a plan sufficient for all benefit liabilities shall be valid for purposes of this part only if the commitment—

(i) Is made to the plan;

(ii) Is in writing, signed by the contributing sponsor and/or controlled group member(s); and

(iii) If the contributing sponsor or controlled group member is the subject of a bankruptcy liquidation or reorganization proceeding, as described

in § 2616.3(d)(1) or (d)(2) of this subchapter, is approved by the court before which the liquidation or reorganization proceeding is pending or is unconditionally guaranteed, by a person not in bankruptcy, to be met at or before the time distribution of assets is required in the standard termination.

(b) *Alternative treatment of majority owner's benefit.* (1) *General rule.* In order to facilitate the termination of the plan and distribution of assets in a standard termination, a majority owner may agree to forego receipt of all or part of his or her benefit until the benefit liabilities of all other plan participants have been satisfied.

(2) *Requirements for valid agreement.* Any agreement by a majority owner to an alternative treatment of his or her benefit is valid only if—

(i) The agreement is in writing;

(ii) In any case in which the total value of the benefit (determined in accordance with § 2617.6(b)) is greater than $3,500, the spouse, if any, of the majority owner consents, in writing, to the alternative treatment of the benefit; and

(iii) The agreement is not inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of the Act).

§ 2617.8 Filing with the PBGC.

(a) *Date of filing.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received no later than 4:00 p.m. on a day other than Saturday, Sunday, or a Federal holiday. Documents received after 4:00 p.m. or on Saturday, Sunday, or a Federal holiday shall be deemed filed on the next regular business day.

(b) *How to file.* Any document to be filed under this part may be delivered by mail or by hand to: Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street, NW., Washington, DC 20006–1806.

§ 2617.9 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Notwithstanding the preceding sentence, a proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

§ 2617.10 Maintenance of plan records.

Either the contributing sponsor or the plan administrator of a terminating plan shall maintain and preserve all records used to compute benefit liabilities with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date, in accordance with the following rules:

(a) The records to be maintained and preserved are those used to compute the benefit for purposes of distribution to each individual in accordance with § 2617.28(c) and include, but are not limited to, the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of benefits.

(b) All records subject to this section shall be preserved for six years after the date the post-distribution certification required under § 2617.28(h) is filed with the PBGC.

(c) The contributing sponsor or plan administrator, as appropriate, shall make records subject to this section available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after receipt of the PBGC's written request therefor (or such other period as may be specified in such written request).

Subpart B—Standard Termination Process

§ 2617.21 Purpose and scope.

This subpart describes in detail the standard termination process. Sections 2617.22–2617.24 prescribe the rules for the first two statutory notices that plan administrators must issue in a standard termination. The first, the "notice of intent to terminate," is issued to all affected parties to begin the termination process. The second, the "notice of plan benefits," is issued to participants and beneficiaries before the PBGC begins its review of the proposed termination. Section 2617.25 describes the rules for filing with the PBGC the "standard termination notice" and any supplemental notice or notices. Sections 2617.26 and 2617.27 cover the PBGC's review of the proposed termination and the actions that the PBGC may take if it finds noncompliance with the termination procedures. Section 2617.28 prescribes the rules for closing out a plan in the absence of a notice of noncompliance from the PBGC.

§ 2617.22 Notice of intent to terminate.

(a) *General rule.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party a written notice of intent to terminate containing all of the information specified in paragraph (d) of this section. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraph (a)(1) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time period will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance.* (1) *Method.* The plan administrator shall issue the notice of intent to terminate to each affected party individually either by hand delivery or by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to each affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice.* The plan administrator shall include in the notice of intent to terminate all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a standard termination on a proposed termination date that is either—

(i) A specific date set forth in the notice, or

(ii) A date to be determined that is dependent on the occurrence of some future event;

(5) If the proposed termination date is dependent on the occurrence of a future event, the nature of the event (such as

the merger of the contributing sponsor with another entity), generally when the event is expected to occur, and when the termination will occur in relation to the other event;

(6) A statement that benefit and service accruals will continue until the date of termination or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of the Act;

(7) A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan with respect to each participant and each beneficiary of a deceased participant;

(8) A statement that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends;

(9) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of intent to terminate is issued, a statement that—

(A) Irrevocable commitments may be purchased from an insurer to provide some or all of the benefits under the plan,

(B) The insurer or insurers have not yet been identified, and

(C) Affected parties will be notified of the name and address of the insurer or insurers at a later date (but no later than 45 days before the date of distribution, as defined in § 2617.2);

(10) A statement that if the termination does not occur, the plan administrator will notify the affected parties in writing of that fact;

(11) A statement that each affected party, other than any employee organization, will be receiving a written notification of the benefits that the person will receive; and

(12) For retirees only, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination.

(e) *Supplemental notice requirements.*

(1) The plan administrator shall issue a supplemental notice (or notices) of intent to terminate to each affected party in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of intent to terminate is issued; or

(ii) The plan administrator notifies affected parties of the insurer or insurers from whom he or she intends to purchase the irrevocable commitments, either in the notice of intent to terminate or in a later notice, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraph (b) of this section no later than 45 days before the date of distribution and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

(3) Any supplemental notice or notices meeting the requirements of paragraph (e)(2) of this section shall be deemed a part of the notice of intent to terminate.

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction, the plan administrator shall provide all participants in the original plan who are covered by the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 2617.23 Issuance of notices of plan benefits.

(a) *General rule.* No later than the date on which the plan administrator files the standard termination notice with the PBGC, as required by § 2617.25, the plan administrator shall issue to each person described in paragraph (b) of this section a notice of that individual's plan benefits. The notice shall be in the form and contain the information specified in § 2617.24. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Persons entitled to notice.* The plan administrator shall issue a notice of plan benefits to each person (other than any employee organization) who is an affected party as of the proposed termination date (and, in the case of a spin-off/termination transaction, each person who is, as of the proposed termination date, a participant in the original plan who is covered by the ongoing plan).

(c) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of plan benefits after the expiration of the time period specified in paragraph (a) of this section, the failure to issue a notice of plan benefits to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of plan benefits in the form and containing the information specified in § 2617.24.

(d) *Issuance.* (1) *Method.* The plan administrator shall issue a notice of plan benefits individually to each person described in paragraph (b) of this section, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of plan benefits is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

§ 2617.24 Form and contents of notices of plan benefits.

(a) *Form of notices.* The plan administrator shall provide notices of plan benefits written in plain, non-technical English that is likely to be understood by the average participant or beneficiary. If technical terms must be used, their meaning shall be explained in non-technical language.

(b) *Foreign languages.* If, as of the proposed termination date, a plan either—

(i) covers fewer than 100 participants and at least 25 percent of those participants speak only the same non-English language or

(ii) covers 100 or more participants and the lesser of 500 or 10 percent of those participants speak the same non-English language,

the plan administrator shall comply with paragraph (a) of this section and also shall include in the notices a statement, prominently displayed, in the foreign language (or languages) common to the non-English speaking plan participants advising them of how they may obtain assistance in understanding the notice. The assistance need not involve written materials, but shall be adequate to reasonably ensure that the participants and beneficiaries understand the information contained in their notices and shall be provided through media and at times and places that are

reasonably accessible to the participants and beneficiaries.

(c) *Contents of notice.* In addition to the information described in paragraph (d), (e), or (f) of this section, as applicable, the plan administrator shall include in each notice of plan benefits the following information:

(1) The name of the plan, the employer identification number ("EIN") of the contributing sponsor, and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(2) The name, address, and telephone number of the person who may be contacted to answer questions concerning a participant's or beneficiary's benefit;

(3) The proposed termination date and, if applicable, a statement that this date is later than the proposed termination date given in the notice of intent to terminate; and

(4) If the amount of the plan benefits set forth in a notice is an estimate, a statement that the amount is an estimate and that benefits paid may be greater than or less than the estimate.

(d) *Benefits of persons in pay status.* The plan administrator shall include in the notice of plan benefits for a participant or beneficiary in pay status as of the proposed termination date the following information:

(1) The amount and form of the participant's plan benefits payable as of the proposed termination date;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) For benefits of participants or beneficiaries in pay status for one year or less as of the proposed termination date, the specific personal data used to calculate the plan benefits described in paragraphs (d)(1) and (d)(2) of this section, e.g., participant's age at retirement, spouse's age, participant's length of service, and including, for Social Security offset benefits, the participant's actual or, if unknown, estimated Social Security benefit and, for an estimated benefit, the assumptions used for the participant's earnings history.

(e) Benefits of participants not in pay status but form and starting date known. The plan administrator shall include in the notice of plan benefits for a participant who is not in pay status as of the proposed termination date, but who has, as of that date, elected to retire and has elected a form and starting date, or with respect to whom the plan administrator has determined a lump sum distribution will be made, the following information:

(1) The amount and form of the participant's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) If the age at which, or form in which, the plan benefits will be paid differs from the age or form in which the participant's accrued benefit at normal retirement age is stated in the plan, the age or form stated in the plan and the age or form adjustment factors, including, in the case of a lump sum benefit, the interest rate used to convert to the lump sum benefit described in paragraph (e)(1) of this section and a reference to the pertinent plan provision;

(5) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits (other than a lump sum benefit) described in paragraphs (e)(1) and (e)(2) of this section and, with respect to a benefit payable as a lump sum, the personal data used to calculate the underlying annuity; and

(6) If the plan benefits will be paid in a lump sum, an explanation of how the interest rate is used to calculate the lump sum; a statement that the higher the interest rate used, the smaller the lump sum amount; and, if applicable, a statement that the lump sum amount given is an estimate because the applicable interest rate may change before the distribution date.

(f) *Benefits of all other participants not in pay status.* The plan administrator shall include in the notice of plan benefits for any participant not described in paragraph (d) or (e) of this section, the following information:

(1) The amount and form of the participant's plan benefits payable at normal retirement age in any form permitted under the plan;

(2) The availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death either before or after retirement, and, for any benefits to which the participant is or may become entitled that would be payable before normal retirement age, the earliest benefit commencement date, the amount payable on and after such date, and whether the benefit would be subject to future reduction;

(3) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits described in paragraph (f)(1) of this section and, with respect to a benefit that may be paid in a lump sum, the personal data used to calculate the underlying annuity; and

(4) If the plan benefits may be paid in a lump sum, an explanation of when a lump sum may be paid without a participant's consent; an explanation of how the interest rate is used to calculate the lump sum; and a statement that the higher the interest rate used, the smaller the lump sum amount.

§ 2617.25 Standard termination notice.

(a) *Form.* The plan administrator shall file with the PBGC a PBGC Form 500, Standard Termination Notice, Single-Employer Plan Termination, with Schedule EA-S, Standard Termination Certification of Sufficiency, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Supplemental notice requirement.* If any of the benefits of the terminating plan may be provided in annuity form through the purchase of irrevocable commitments from an insurer and either of the conditions in paragraph (b)(1) of this section are met, the plan administrator shall file a supplemental notice (or notices) with the PBGC in accordance with the provisions in paragraph (b)(2) of this section.

(1) The plan administrator shall file with the PBGC a supplemental notice (or notices) if—

(i) The insurer or insurers from whom the plan administrator intends to purchase irrevocable commitments is not identified in the standard termination notice filed with the PBGC, or

(ii) The plan administrator has notified the PBGC of the insurer or insurers from whom he or she intends to purchase irrevocable commitments, either in the standard termination notice or in a later notice pursuant to paragraph (b)(2) of this section, and subsequently decides to select a different insurer.

(2) The supplemental notice (or notices) may be filed at any time after the filing of the standard termination

notice, but no later than 45 days before the date of distribution, and shall—

(i) Be in writing addressed to: Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street, NW., Washington, DC 20006–1860;

(ii) Give information identifying the contributing sponsor and the plan by name, address, employer identification and plan numbers ("EIN/PN"), and PBGC case number (if applicable); and

(iii) Give the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 2617.26 PBGC action upon filing of standard termination notice.

(a) *Review period upon filing of standard termination notice.* (1) *General rule.* After a complete standard determination notice has been filed in accordance with § 2617.8, the PBGC has 60 days to review the notice, determine whether to issue a notice of noncompliance pursuant to § 2617.27, and issue any such notice. The 60-day review period begins on the day following the filing of a complete standard termination notice and includes the 60th day. If the PBGC does not issue a notice of noncompliance by the last day of this 60-day period, the plan administrator shall proceed to close out the plan in accordance with § 2617.28.

(2) *Extension of review period.* The 60-day review period may be extended according to the following rules:

(i) The PBGC and the plan administrator may agree in writing, before the expiration of the 60-day review period, to extend the period for up to an additional 60 days;

(ii) More than one such extension may be made; and

(iii) Any extension may be made upon whatever terms and conditions are agreed to by the PBGC and the plan administrator.

(3) *Suspension of review period.* The 60-day review period shall be suspended in accordance with paragraph (d) of this section if the PBGC requests supplemental information.

(b) *Acknowledgment of complete standard termination notice.* The PBGC shall notify the plan administrator in writing of the date on which a complete standard termination notice was filed, so that the plan administrator may determine when the 60-day review period will expire.

(c) *Return of incomplete standard termination notice.* The PBGC shall return an incomplete standard termination notice and advise the plan administrator in writing of the missing item(s) of information and that the complete standard termination notice must be filed no later than the 120th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(d) *Authority to request supplemental information.* Whenever the PBGC has reason to believe that any of the requirements of §§ 2617.22–2617.25 of this part were not complied with, or in any proposed termination that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require the submission of information supplementing that furnished pursuant to § 2617.25. A request for additional information under this paragraph shall be in writing and shall suspend the running of the 60-day (or extended) review period described in paragraph (a) of this section. That period shall begin running again on the day following the filing of the required information. If a plan administrator or contributing sponsor fails to submit information required under this paragraph within the period specified in the PBGC's request, the PBGC may issue a notice of noncompliance in accordance with § 2617.27 or take other appropriate action to enforce the requirements of Title IV of ERISA.

(e) *Authority to suspend or nullify proposed termination.* Notwithstanding any other provision of this part, the PBGC may, by written notice to the plan administrator, suspend or nullify a proposed termination after expiration of the 60-day (or extended) review period in any case in which it determines that such action is necessary to carry out the purposes of Title IV of ERISA.

§ 2617.27 Notice of noncompliance.

(a) *General.* (1) The PBGC shall issue to the plan administrator a written notice of noncompliance, within the period prescribed by § 2617.26, whenever it makes one of the following determinations:

(i) A determination that the plan administrator failed to issue the notice of intent to terminate in accordance with § 2617.22.

(ii) A determination that the plan administrator failed to issue notices of plan benefits in accordance with §§ 2617.23 and 2617.24.

(iii) A determination that the standard termination notice, or any supplemental notice, was not filed in accordance with § 2617.25.

(iv) A determination that, as of the proposed distribution date, plan assets will not be sufficient to satisfy all benefit liabilities under the plan.

(2) The PBGC shall base any determination described in paragraph (a)(1) of this section on the information contained in the standard termination notice, including any supplemental submission under § 2617.26(d) and any supplemental notice under § 2617.25(b), or on information provided by any affected party or otherwise obtained by the PBGC.

(b) *Effect of notice of noncompliance.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. The notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration pursuant to paragraph (c) of this section but, once a notice is issued, the plan administrator shall take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked pursuant to a decision by the PBGC on reconsideration.

(c) *Reconsideration of notice of noncompliance.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in Subpart C of Part 2606 of this chapter. Any request for reconsideration automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on reconsideration.

(d) *Notice to affected parties.* (1) *General rule.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 2617.22(f)) in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(2) *Method of issuance.* The notices shall be delivered by first-class mail or by hand to each person described in paragraph (d)(1) who is an employee organization or a participant or beneficiary who is then in pay status. The notices to other participants and beneficiaries shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in an employee organization newsletter or newspaper of general circulation in the area or areas where participants and beneficiaries reside.

§ 2617.28 Closeout of plan.

(a) *General rules.* (1) *Distribution.* Except as provided in paragraphs (b), (e), and (f) of this section, if the PBGC does not issue a notice of noncompliance within the period specified in § 2617.26 or, if a notice of noncompliance is issued and later revoked after reconsideration under § 2617.27(c), the plan administrator shall complete the distribution of plan assets in accordance with paragraph (c) of this section within 180 days after the expiration of the review period specified in § 2617.26 or, if applicable, the date on which the PBGC revokes the notice of noncompliance.

(2) *Post-distribution requirements.* The plan administrator shall file with the PBGC a post-distribution certification in accordance with paragraph (h) of this section and, if any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator also shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with paragraph (g) of this section.

(b) *Assets insufficient to satisfy benefit liabilities.* Before distributing plan assets to close out the plan, the plan administrator shall determine that plan assets are, in fact, sufficient to satisfy all benefit liabilities. In determining if plan assets are sufficient, the plan administrator shall subtract all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs. If plan assets are not sufficient to satisfy all benefit liabilities, the plan administrator shall not make any distribution of assets to effect the plan's termination. In the event of an insufficiency, the plan administrator shall promptly notify the PBGC.

(c) *Method of distribution.* The plan administrator shall distribute plan assets in accordance with § 2617:6 by purchasing irrevocable commitments from an insurer in satisfaction of all benefit liabilities that must be provided in annuity form, and by otherwise providing all benefit liabilities that need not be provided in annuity form.

(d) *Failure to distribute within 180-day period.* Except as provided in paragraphs (e) and (f) of this section, failure to distribute assets in accordance with paragraph (c) of this section within the 180-day distribution period set forth in paragraph (a)(1) of this section, because of an insufficiency of plan assets as described in paragraph (b) of this section or for any other reason, shall nullify the termination. All actions taken to effect the plan's termination shall be null and void, and the plan shall be an ongoing plan. In this event, the plan administrator shall notify affected parties in writing, in accordance with § 2617.27(d), that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(e) *Automatic extension of time for distribution.* (1) *Requirements for automatic extension.* The plan administrator shall be entitled to an automatic extension of the 180-day period in which to complete the distribution of plan assets if the plan administrator—

(i) Submits to the Internal Revenue Service a complete request for a determination with respect to the plan's tax-qualification status upon termination ("determination letter") on or before the date that the plan administrator files the standard termination notice with the PBGC;

(ii) Does not receive a determination letter at least 60 days before the expiration of the 180-day period; and

(iii) On or before the expiration of the 180-day period, notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in this paragraph have been met.

(2) *Extension period.* If the requirements in paragraph (e)(1) of this section are met, the time within which the plan administrator shall complete the distribution of plan assets is automatically extended until the 60th day after receipt of a favorable determination letter from the Internal Revenue Service.

(f) *Discretionary extension of time for distribution.* If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period for any reason other than an insufficiency described in paragraph (b) of this section, the plan administrator may request, and the PBGC shall grant or deny, in its discretion, an extension of time within which to complete the distribution according to the following rules:

(1) The plan administrator shall file a written request for a discretionary extension with the PBGC at least 30 days before the expiration of the 180-day (or extended) distribution period, explain the reason(s) for the request, and provide a date certain by which the distribution will be made if the extension is granted.

(2) The PBGC will not grant a discretionary extension based on failure to meet the requirements for an automatic extension under paragraph (e) of this section or failure to locate all participants or beneficiaries.

(3) The PBGC will grant a discretionary extension, in whole or in part, only if it is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and that the distribution can in fact be completed by the date requested.

(g) *Notice of annuity contract.* In the case of the distribution of benefit liabilities through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer shall, as soon as practicable, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit;

(2) If such a contract or certificate is not available on or before the date on which the post-distribution certificate is required to be filed pursuant to paragraph (h) of this section, the plan administrator shall, no later than such date, provide each participant and beneficiary with a written notice stating—

(i) That the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) That the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; and

(3) The plan administrator shall certify to the PBGC, as part of the post-distribution certification required under paragraph (h) of this section, that the requirements in paragraph (g)(1) or (g)(2) of this section have been satisfied.

(h) *Post-distribution certification.* Within 30 days after the completion of the distribution of plan assets in accordance with paragraph (c) of this section, the plan administrator shall file with the PBGC a PBGC Form 501, Post-Distribution Certification for Standard Terminations, that has been completed

in accordance with the instructions thereto.

Appendix to Part 2617—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities

This agreement, by and between [name of company] _____(the "Company") and [name of plan] _____(the "Plan") shall be effective as of the last date executed.

Whereas, the Plan is an employee pension benefit plan as described in section 3(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001–1461; and

Whereas the Company is [describe entity, *e.g.*, corporation, partnership] _____; and

Whereas, the Company is a contributing sponsor of the Plan, or a member of the contributing sponsor's controlled group, as described in section 4001(a) (13) and (14) of ERISA, 29 U.S.C. 1301(2) (13) and (14); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of ERISA, 29 U.S.C. 1301–1461; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a notice of intent to terminate the Plan, pursuant to section 4041(a)(2) of ERISA, 29 U.S.C. 1341(a)(2); and

Whereas, the Company wishes the Plan to be sufficient for benefit liabilities, as described in section 4001(a)(16) of ERISA, 29 U.S.C. 1301(a)(16); and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for benefit liabilities, it will not be able to terminate in a standard termination under section 4041(b) of ERISA, 29 U.S.C. 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and this commitment is unconditionally guaranteed, by an entity or person not in bankruptcy, to be met at or before the time distribution is required in this standard termination.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the plan administrator, the amount necessary, if any, to ensure that, on the date the plan administrator distributes the assets of the Plan, the Plan is able to provide all benefit liabilities.

2. For the sole purpose of determining whether the Plan is sufficient to provide all benefit liabilities, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of ERISA, 29 U.S.C. 1344.

3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date: _____

By: _____

Company: _____

By: _____

Plan: _____

Issued in Washington, D.C. this 7th day of December, 1992.

Lynn Martin,

Chairman, Board of Directors Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 92–30057 Filed 12–11–92; 8:45 am]

BILLING CODE 7708–01–M

federal register

Monday
December 14, 1992

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Karner Blue Butterfly and Five Aquatic Snails in South Central Idaho; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Karner Blue Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the Karner blue butterfly (*Lycaeides melissa samuelis*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Historically, the Karner blue butterfly occurred in a rather narrow band extending from eastern Minnesota, across portions of Wisconsin, Illinois, Indiana, Michigan, Ohio, Canada (Ontario), Pennsylvania, New York, Massachusetts, and New Hampshire. It is now extirpated from Ohio, Pennsylvania, and Massachusetts, and is considered virtually extirpated from Ontario. This action is being taken because of constriction of the species' range and the declining size of remaining populations. The primary cause of past and threatened losses is habitat modification and destruction due to development, succession in the absence of natural disturbances, silviculture, and fragmentation of remaining habitat. This listing extends the Federal protection and recovery provisions afforded by the Act to *Lycaeides melissa samuelis*.

EFFECTIVE DATE: December 14, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, New York 13045.

FOR FURTHER INFORMATION CONTACT: Mark W. Clough at the above address, telephone (607) 753–9334.

SUPPLEMENTARY INFORMATION:

Background

The Karner blue butterfly has been known for more than a century. When W.H. Edwards first described this butterfly in 1861 in Karner, New York, it was considered to belong to the same species as the Scudder's blue. In the 1940's, Nabokov revised the taxonomy of the group and renamed the Karner blue as a subspecies of the more common Melissa blue. The current scientific name is *Lycaeides melissa samuelis*, Nabokov. Some lepidopterists consider the Karner blue butterfly to be a separate species (D. Schweitzer, The Nature Conservancy, *in litt.*, 1987). However, this change has not been published and the Karner blue butterfly will be considered a subspecies for the purposes of listing.

Karner blues have a wingspan of 22–32 mm (0.87–1.26 in). The dorsal side of the male is silvery blue or dark blue with narrow black margins. The females are grayish brown dorsally, with irregular bands of orange inside the narrow black border on the upper wings. Both sexes are slate gray on the ventral side with the orange bands showing more regularity, and black spots circled with white (Shull 1987).

The habitat of the Karner blue butterfly is characterized by the presence of wild lupine (*Lupinus perennis*), a member of the pea family. Wild lupine is the only known larval food plant for the Karner blue butterfly and is, therefore, closely tied to the butterfly's ecology and distribution. In eastern New York and New Hampshire, the habitat typically includes sandplain communities, and grassy openings within very dry, sandy pitch pine/scrub oak barrens. In the Midwest, the habitat is also dry and sandy, including oak savanna and jack pine areas, and dune/sandplain communities. It is believed that the Karner blue butterfly originally occurred as shifting clusters of populations, or metapopulations, across a vast fire-swept landscape covering thousands of acres. While the fires resulted in localized extirpation, post-fire vegetational succession promoted colonization and rapid population buildups (Schweitzer 1989). Periodic disturbance is necessary to maintain openings in the canopy for wild lupine to thrive. A variety of other understory plants associated with the habitat serve as nectar sources for the adult butterflies.

The Karner blue butterfly usually has two broods each year. Eggs that have overwintered from the previous year hatch in April. The larvae feed on wild lupine leaves and mature rapidly. Near the end of May, they pupate and adult butterflies emerge very late in May in most years. The adults are typically in flight for the first 10 to 15 days of June, when the wild lupine is in bloom. Females lay eggs on or near the wild lupine plants. The eggs hatch in about one week and the larvae feed for about three weeks. They then pupate and the second brood adults appear in the second or third week of July. This time, the eggs are laid among plant litter or on grass blades at the base of the lupines, or on lupine pods or stems. By early August, no adults remain, and these eggs do not hatch until the following spring (Schweitzer 1989, Dirig 1979).

The distribution of the Karner blue butterfly is very discontinuous and generally follows the northern limits of wild lupine. Eight major population clusters of the Karner blue butterfly were known historically from portions of Wisconsin, Michigan, Minnesota, Indiana, Illinois, Ohio, Massachusetts, New Hampshire, Pennsylvania, New York, and Ontario. Over the past 100 years, Karner blue butterfly numbers have apparently declined rangewide by 99 percent or more. Over 90 percent of the decline occurred in the last 10 to 15 years. It is now extirpated from Massachusetts, Pennsylvania, and Ohio (Schweitzer 1989; *in litt.*, 1990). Unconfirmed reports indicate that one or two Karner blues may have been sighted at an historic Ontario site in 1990 or 1991.

The New York Natural Heritage Program maintains a state list of approximately 50 individual Karner blue butterfly sites, comprising about ten site-clusters, all found in the area known as the Albany Pine Bush and at scattered locations extending about 40 miles to the north. Once the site of a massive Karner blue population, the Albany Pine Bush is the locality from which the Karner blue butterfly was first scientifically described. There are also unverified records of Karner blues in Manhattan and Brooklyn from the mid 1800's. Givnish *et al.* (1988) noted a decline of Karner blue butterflies in the Albany Pine Bush of 85 to 98 percent over the past decade, exclusive of one site that has remained stable. Givnish *et al.* (1988) and Schweitzer (1990) described the decline in the Pine Bush population as dropping from numbers of around 80,000 in 1979, to around 1,000 in 1987, to 100–200 in 1990. North of the Albany Pine Bush, one disturbed site located at an airport has persisted with numbers estimated around 14,000 in 1990. This population is several times larger than all the other New York sites combined (Schweitzer 1990). The majority of extant Karner blue sites in New York are in municipal and private ownership. Other landowners include a State Park, The Nature Conservancy, and Saratoga County.

In New Hampshire, the Concord Pine Barrens along the Merrimack River support the only remaining occurrence of the Karner blue butterfly in New England. The sole population is extremely low in numbers and occurs on a privately owned, two to three acre site within a power line right-of-way bordering an industrial park, and on the grounds of a nearby airport. The results

of 1990 surveys reported by The Nature Conservancy (1990) showed a decline in the population size from an estimated 2,000 to 3,000 individuals in 1983 to an estimated 250 to 400 individuals in 1990. During that survey, Karner blue butterflies were not found at two other sites in the Concord Pine Barrens where the subspecies had been documented in 1983.

In Wisconsin, 33 of 36 historical occurrence sites were surveyed during 1990. Survey results reported by Bleser (1990) revealed that Karner blue butterflies were found at only 11 of the 33 historical sites visited. Although 23 previously unknown populations were discovered, Bleser noted that numbers of Karner blue butterflies observed were very small at most sites. Only three sites had 50 or more individuals observed, with none greater than 100. While these surveys did not provide a basis for statements of actual population size, they all appeared to be small, and many might not be considered viable. Many of the remnant populations in Wisconsin are also widely scattered, occurring in isolated patches of habitat along roadsides, power line clearings, and on abandoned agricultural fields. Additional surveys conducted in 1991 revealed a total of 131 discrete lupine areas that support Karner blue butterflies (Besadny *in litt.*, 1992). During the 1991 surveys, ten or fewer adults were counted at 53 percent of the 131 discrete sites, 11–50 adults were counted at 29 percent of the sites, 51–100 adults were counted at 10 percent of the sites, 101–300 at only seven percent of the sites, and over 300 at just one percent of the sites. It should be noted that actual population sizes may be 3 to 6 times, or higher, than the numbers of butterflies counted on a given site visit. At least half of Wisconsin's remaining Karner blue butterfly populations are small, isolated, and cannot be considered secure or viable in the long term. However, "a very good number of quite sizable populations occur on publicly owned properties offering good opportunities for long-term protection and management" (Besadny *in litt.*, 1992). Over three fourths of the Wisconsin sites are on publicly administered lands, including Necedah National Wildlife Refuge, Department of Defense, Wisconsin Department of Natural Resources, and County Forest. Other sites are owned or partly owned by other state and county governmental agencies, private landowners, and utility companies.

The Karner blue butterfly has declined throughout its range in Michigan. It still occurs in six of seven counties from which it was known historically, but the existing populations are greatly reduced and have become highly fragmented within expanses of unsuitable habitat (Wilsmann 1990). The Michigan Natural Features Inventory includes over two dozen historical locations for the Karner blue butterfly. Five of these no longer support populations of Karner blue butterflies, and many of the remainder are ranked as poor quality sites. Considering the population dynamics of the species, it can be expected that many individual sites which once supported populations of Karner blue butterflies are no longer suitable. Although information on exact historical locations is lacking, many general areas reported to have Karner blue butterflies in the 1950's have become unsuitable due to succession or conversion to plantations (L. Wilsmann, Michigan Department of Natural Resources, pers. comm., 1991). In his critique of 1989 population studies done by W. S. Lawrence and A. C. Cook in the Allegan State Game Area, Michigan's only remaining sizable population, Schweitzer (*in litt.*, 1989) noted that the results indicate a decline to fragmented remnants with dangerously low numbers, which is characteristic of a collapsing Karner blue butterfly population. Other Michigan sites occur on the Manistee National Forest (intermixed with private inholdings), on power company rights-of-way, and on other private lands.

The results of surveys during 1990 in Indiana were summarized by C. Hedge (Indiana Department of Natural Resources, pers. comm., 1991). Karner blue butterflies were reconfirmed at one known site, and they were also rediscovered on three of seven historical sites. Searches at 27 sites identified as potentially suitable for the species yielded six new locations for the species. However, all extant sites in Indiana are in two population clusters within two counties. Six sites are located on Indiana Dunes National Lakeshore, and other landowners include a county park and recreation department, a school district, and The Nature Conservancy. Shull (1987) indicated eight Indiana counties in the historic range of the Karner blue, although some of these records are based on sightings that are not supported with voucher specimens. The species is no longer found at one area where Shull reported observing dozens of individuals in 1980.

Cuthrell (1990) reported the results of 1990 surveys conducted in Minnesota. During the 1990 surveys of 50 potentially suitable sites, two areas with Karner blue butterflies were located. Both sites are on a State Wildlife Management Area, in the vicinity of one of the historical locations. Karner blue butterflies were not found at the other historical site. Studies conducted during 1991 revealed three new sites within one half to three miles of the sites surveyed in 1990 (Lane 1992a). Lane reported low numbers of individuals observed at all five sites, with none greater than 14, indicating extremely small populations.

The Karner blue butterfly was presumed extirpated from Illinois until the species was relocated there in August 1992. A total of seven butterflies, including five males and two females, were reported from a lupine site in the northern part of the State (S. Lauzon, Illinois Endangered Species Protection Board, pers. comm., 1992). The Karner blue was previously known from one collection in Illinois. This record consists of two specimens from the Andreas Bolter collection, labelled "N. I11." (Irwin and Downey 1973), which suggests that they were collected around or before 1900.

Karner blues frequently occur with other rare butterfly species such as the persius duskywing (*Erynnis persius*) and the frosted elfin (*Incisalia irus*), which are being listed by states where they occur (D. Schweitzer, pers. comm., 1991). Wild lupine is also the host plant for these species in parts of their range.

The Karner blue butterfly was first recognized by the Federal government in the **Federal Register** Notice of Review published on May 22, 1984 (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included the Karner blue butterfly as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989 (54 FR 554), the Karner blue butterfly was retained as a Category 2 species. Although the decline of the Karner blue butterfly in the Northeast was documented during the 1980's, it was believed that populations in the Midwest were relatively secure, particularly in Wisconsin and Michigan. Surveys conducted during 1989 and 1990 in the Midwest revealed that the butterfly is in decline there also. The Animal Notice of Review published in the November 21, 1991 **Federal Register** included the Karner blue butterfly as a Category 1 species, indicating that the

Service possessed sufficient information to support a proposal to list this butterfly. On January 21, 1992 (57 FR 2241), the Service published a proposed rule to list the Karner blue butterfly as an endangered species.

Summary of Comments and Recommendations

In the January 21, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, major landowners, and other interested parties were contacted and requested to comment. Notices were published in newspapers of general circulation in each area where the Karner blue butterfly is known to occur. On March 4, 1992, the Service received a request for a public hearing from Dr. Wilmer Pautz of the University of Wisconsin-Eau Claire. Accordingly, on June 8, 1992, the Service published a notice in the **Federal Register** extending the comment period to July 6, 1992, and announcing a public hearing to be held in Eau Claire, Wisconsin on June 25, 1992. At the hearing the public was invited to present oral or written information to be entered into the record, on factors pertinent to the proposed listing of the Karner blue butterfly. Mrs. Maud Kelley, a local resident, and Dr. Wilmer Pautz, representing various citizens in Eau Clair County, presented the only oral statements, and no additional written statements were submitted at the public hearing.

A total of 112 written comments on the proposed listing were received by the Service. Comments supporting the listing were received from the Ohio, Indiana, Wisconsin, and Minnesota Departments of Natural Resources, the New Hampshire Fish and Game Department, and the New York State Department of Environmental Conservation. Comments supporting the listing were also received from six professional or amateur lepidopterists and butterfly researchers, and eight private conservation organizations. A total of 91 comment letters were received from private citizens; 87, including 66 from elementary school students, expressed support for listing the Karner blue butterfly. The remaining four comments from private citizens include the comment letter from Dr. Pautz requesting the public hearing and also requesting that listing be delayed for three years, two commenters that did not take a position on the listing, and one commenter who expressed opposition to proposed listing. A comment letter from the Newaygo County, Michigan Board of Commissioners expressed conditional support for the listing, if it would not interfere with the gypsy moth eradication program.

Many of the commenters provided general information or observations about the Karner blue butterfly, and additional scientific or factual information. Several commenters offered suggestions or recommendations for future protection, research, management, and recovery efforts, or offered to assist the Service in these areas. The Service will consider those suggestions and recommendations, and will continue to work with all interested parties in future efforts to protect and recover this species. Comments updating the data presented in the "Background" or "Summary of Factors Affecting the Species" are incorporated in those sections of this final rule. The Service's responses to the comments and issues raised at the public hearing and in the written comments follow.

Issue 1. The one comment received that opposed the listing of the Karner blue butterfly stated that development might be impacted, forests would be destroyed, and questioned the Karner blue butterfly's contribution to society.

The Service responds that under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The first decision to list a species is based on biological criteria defined in five specific factors as discussed in the "Summary of Factors Affecting the Species" section of this rule. As discussed in that section of this rule, development has been a contributing factor in the destruction, modification, and fragmentation of the habitat of the Karner blue butterfly. The Service believes that additional protection and management of habitat for the Karner blue butterfly is essential for its survival. Management of habitat for the Karner blue butterfly requires maintaining openings in pine barrens, oak savanna, and sandplain habitat, particularly where natural processes have been curtailed, in order to allow the growth of the plant species wild lupine, upon which the Karner blue butterfly depends. Broad-scale conversion of forests to create Karner blue butterfly habitat would not be appropriate or necessary for proper management of this species. There may be many opinions as to a particular species' contribution to society including its aesthetic, scientific, ecological, or other significance, however this contribution of a species to society is not among the five factors upon which a listing determination is based.

Issue 2. Both commenters at the public hearing favored protection of the Karner blue butterfly and its habitat, and in particular, a specific area in the city of Altoona, Wisconsin. Mrs. Kelley commented on the potential of this area to provide habitat for the Karner blue butterfly. Dr. Pautz's statement pointed out the existence of suitable habitat in the Altoona area, and provided additional information on other sites in Wisconsin. Dr. Pautz's original comments requesting the hearing and his statement at the hearing contended there was a need for additional studies to determine the extent of Karner blue populations and habitat in the Altoona area prior to listing, and that Karner blue butterflies were found in more abundance in Wisconsin than indicated in the proposed rule.

Karner blue surveys were conducted in 1992 in the Altoona area in conjunction with review of a proposed highway project. Several sites that appeared to furnish suitable habitat were located during first flight period surveys in early June. However, resurvey of these areas during the second flight by a University of Minnesota graduate student who is conducting research on this species failed to locate any Karner blues at four sites and found only seven butterflies at a fifth site (Lane 1992b).

The text of this rule has been updated to reflect the most recent available data on the Karner blue butterfly's status in Wisconsin. As discussed in response to Issue 4, below, the Service believes that this butterfly warrants endangered status due to the danger of extinction in all or a significant portion of its range. The Service is confident that recent surveys have located most large Karner blue populations in Wisconsin. Furthermore, even relatively large extant populations cannot be considered secure unless threats from succession have been alleviated.

Issue 3. Dr. Pautz's statement expressed concern that the Service had proposed a finding that critical habitat determination for the Karner blue butterfly is presently not determinable. He recommended that the Service develop a description of critical habitat elements, and that studies should be conducted in the Altoona area so that critical habitat could be designated at the time of listing. In addition, 17 written comments were received that expressed concern that critical habitat was not being designated at the time of listing, suggested specific locations for

designation provided information on potential areas and habitat characteristics, or offered assistance in critical habitat designation.

The Service responds that the rationale for not designating critical habitat at the time of listing is detailed in the "Critical Habitat" Sections of the proposed rule and this final rule. The Service concluded that designation of critical habitat is not presently determinable as defined under implementing regulations at 50 CFR 424.12(a)(2). As discussed in the "Critical Habitat" section of this document, the Service is working with interested parties throughout the Karner blue butterfly's range to obtain necessary information to define the primary constituent elements of critical habitat, identify and map areas that should be designated, and ascertain the economic impacts of designation. The Service will consider information provided by commenters during formulation of the critical habitat proposal.

When a finding is made that critical habitat is not determinable at the time of listing, the regulations at 50 CFR 424.17(b)(2) provide that the designation of critical habitat be completed to the maximum extent prudent within two years from the date of publication of the proposed rule to list the species. Any proposal to designate critical habitat will be published in the **Federal Register** including maps and legal descriptions of all areas included in the proposal, and public comments will be solicited. The potential economic impacts of the critical habitat designation will be evaluated during the preparation of the required economic analysis.

Issue 4. The Wisconsin Department of Natural Resources noted that Wisconsin still supports a relatively large number of populations of Karner blue butterflies, that some are "quite sizable" with seemingly good potential for long-term viability with favorable management, and recommended that the Karner blue butterfly be designated threatened, rather than endangered. A professional lepidopterist also expressed the opinion that designation as threatened would be appropriate.

The Service responds that endangered status is warranted in situations where the species is in danger of extinction throughout all or a significant portion of its range. The Service recognizes that a few sizable populations with potential for long-term viability, are still extant; however, immediate protection and habitat management are deemed crucial to short- and long-term viability of Karner blue populations, even at these larger sites. The viability of many smaller sites, some of which may be very important to the recovery of the species, is even less certain. As discussed in the "Summary of Factors Affecting the Species" section, the fragility of remaining populations is exemplified by the recent loss of the population in Ontario due to adverse weather conditions. Major habitat restoration efforts were underway, and managers believed that this population of about 1000 second-brood adults was secure for the short- to medium-term. The collapse of the Albany Pine Bush population in New York, from around 80,000 butterflies in 1979 to 100–200 butterflies only eleven years later also illustrates the extreme vulnerability of this species. Considering the severity of decline the Karner blue butterfly has undergone in the past 10 to 15 years, the magnitude and imminence of the threats, and the vulnerability of existing populations, the Service concludes that the Karner blue butterfly is in danger of extinction without immediate and continuing protection and habitat management, and therefore, classification as endangered is warranted.

Issue 5. One commenter pointed out that evaluation of the Karner blue butterfly's relative status among the states must take into account the method of data collection and how the results were calculated. Some of the data were obtained through transect surveys and others from mark-release-recapture (MRR) methods, and the two methods are not directly comparable.

The Service recognizes that direct comparison of data collected using different methods or under different circumstances is inappropriate. The presentation of status information in this document is not intended to provide a direct comparison of population sizes among the states, rather it is presented on a state-by-state basis as an indicator of the decline that the Karner blue butterfly has undergone throughout its range. Recovery planning for this species will involve continued monitoring of its status, and the Service will be working with those involved in monitoring to develop appropriate and consistent survey methods.

Issue 6. Two commenters stated the need to clarify how prohibitions against "take" would be applied, particularly regarding research and management activities. One commenter suggested that taking of one or two voucher specimens be allowed to assure adequate documentation of new sites. Another commenter expressed concern about mark-release-recapture (MRR) work with Karner blue butterflies and its potential to cause injury or mortality.

The Service responds that "take" as defined in Section 3(18) of the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct, and the prohibitions against "take" are applicable to any person subject to the jurisdiction of the United States. Regulations at 50 CFR 17.3 define "harm" as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Since some form of the Karner blue butterfly (eggs, larvae, or adults) is present at all times in habitat where it occurs, prohibitions against "take" would apply to activities involving both the butterflies or the occupied habitat. As discussed in the "Available Conservation Measures" section of this document, permits can be issued for activities to enhance the propagation or survival of listed species. The procedures for obtaining such permits for activities involving endangered species are found in the regulations at 50 CFR 17.22. The Service recognizes the need to conduct various research and management activities for this species that will require permits, and will work closely with those involved to authorize appropriate activities. The potential effects of MRR work on Karner blue butterflies will be carefully considered by the Service in the issuance of any such permits, and during the planning of recovery activities for this species.

Issue 7. One commenter recommended that the Karner blue butterfly be listed as an endangered species, and with it, wild lupine, the only known larval food plant for this species.

The Service responds that although wild lupine has declined within the range of the Karner blue butterfly, this plant species has a wider distribution than the Karner blue butterfly, and lupine is more abundant in other parts of its range. Lupine also persists in some areas within the Karner blue range where the butterflies are no longer found. Information available to the Service does not suggest that lupine warrants consideration for Federal listing.

Issue 8. The Newaygo County Board of Commissioners in Michigan expressed conditional support for listing the Karner blue butterfly, provided the listing does not affect spraying in

connection with the gypsy moth eradication program.

The Service responds that as a result of cooperation between the Service, the Michigan Department of Natural Resources, the Michigan Department of Agriculture, and the U.S. Forest Service (Forest Service) regarding the 1992 Forest Service Gypsy Moth Suppression Program in Michigan, a plan was developed to address protection of natural resources of concern, including the Karner blue butterfly. The plan included establishing no-spray areas and buffer zones around occupied habitat. The Service recognizes there are potential conflicts with protection of the Karner blue butterfly in implementing both Federal and non-Federal spraying programs. The Service will continue working with the Forest Service in reviewing future spraying plans, and will be working with non-Federal programs and examining additional alternatives, such as ground spraying in certain areas and timing of application, in order to allow suppression programs to proceed. Federal listing will extend the protection against taking under Section 9 of the Act, and will require Federal agencies to consult with the Service on activities affecting the Karner blue butterfly under Section 7 of the Act. However, the Karner blue butterfly has been listed as a threatened species by the State of Michigan and, therefore, it presently receives some protection from take under State law. The Service anticipates continuing coordination and cooperation among all those involved regarding this issue.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Karner blue butterfly (*Lycaeides melissa samuelis*) should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Karner blue butterfly (*Lycaeides melissa samuelis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Throughout its range, changes in the habitat occupied by the Karner blue butterfly resulting from silviculture, urbanization, and the declining frequency of wildfires are largely the reasons for its decline (D. Schweitzer, *in litt.*, 1991). Modification and destruction of habitat and fragmentation of remaining areas are continuing threats to the survival of this butterfly. In addition to direct destruction of suitable habitat, urbanization has led to fire suppression on interspersed habitat; in the absence of fire, vegetational succession has made this habitat unsuitable. The threats due to fire suppression are discussed in more detail under Factor E.

In New York, the decline of the Karner blue butterfly resulting from loss and alteration of habitat is largely due to industrial, commercial, and residential development; fire suppression; vegetational succession; and habitat fragmentation. Although very little of the species' decline in the Albany Pine Bush since 1979 can be attributed to overt habitat loss from development, prior to then over 90 percent of the Pine Bush was destroyed over a period of perhaps 250 years (Schweitzer, *in litt.*, 1992). The Albany Pine Bush, which once covered at least 25,000 acres, has been reduced to about 2,500 acres (Givnish *et al.*, 1988). The recent decline in the Albany Pine Bush population can be attributed largely to improper or absent habitat management. Zaremba (1991) noted that in addition to habitat loss, dissection of metapopulations by development such as buildings and roads is a major threat to the Karner blue butterfly in New York, along with detrimental management of lupine stands and habitat disturbance due to off-road vehicles and horseback riding.

Habitat fragmentation and loss of habitat through development, combined with the extremely small size of the remaining population (discussed under Factor E), are the greatest threats to the Karner blue butterfly's continued existence in New England. The pine barrens in New Hampshire have largely been destroyed as a result of industrial, commercial, and residential development; road and airport construction; and gravel and sand mining. A major retail mall, recently completed on the outer edges of Concord's pine barrens, will encourage additional commercial development and further encroachments into pine barren habitat. Remaining fragments of this natural community are threatened by continued development pressures, vegetational succession in the absence of periodic fires, airport expansion, and degradation due to off-road vehicular use. Sperduto (New Hampshire Natural Heritage Inventory, pers. comm., 1991) estimated that 90 to 95+ percent of the historic pine barrens in the Merrimack system have disappeared.

Wisconsin's native savanna or pine and oak barrens community, which historically was quite prevalent throughout central and northwestern Wisconsin, and which very likely once supported many large metapopulations of this taxon, has declined severely. The Wisconsin Department of Natural Resources also reports that very few large contiguous barrens tracts remain in Wisconsin and cite the following threats to Karner blue habitat: fire suppression and succession, conversion to agriculture and pine or Christmas tree plantations, and other development. The Department states: "These threats remain paramount, and in fact are intensified, today (Besadny, *in litt.*, 1992)." Wisconsin still harbors some relatively large Karner blue populations and there are opportunities for long-term management and protection, but a significant long-term habitat management effort will be required if this potential is to be realized. Many other remnant populations of the Karner blue butterfly in Wisconsin are small and widely scattered, occurring in isolated patches of habitat along roadsides, power line clearings, and on abandoned agricultural fields (Bleser 1990).

In Michigan, the major cause for the butterfly's decline has been the degradation and loss of habitat as a result of succession and development. The habitat has been affected by fire suppression, agriculture, silviculture, and off-road vehicles. Remaining Karner blue butterfly populations continue to be threatened by the decline and loss of wild lupine populations resulting from these factors (Wilsmann 1990).

The two major threats in Indiana identified by C. Hedge (pers. comm., 1991) are destruction of habitat by development, and succession resulting from fire suppression.

Cuthrell (1990) identified fire suppression, development, and other human disturbance as causes for the loss of Karner blue butterfly habitat in Minnesota. The major threat to the extant sites is succession, but potential logging of the oak savannas also poses a threat (R. Baker, Minnesota Department of Natural Resources, pers. comm., 1991).

Irwin and Downey (1979) discussed the Karner blue butterfly as "another species that may have become extinct in Illinois . . . as a possible result of ecological change."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There have been large scientific collections of Karner blues in

the past (R. Zaremba, The Nature Conservancy, pers. comm., 1991), although past collecting is not considered to have been a significant factor in the butterfly's decline to its present condition. However, the Karner blue butterfly's rarity and distinctively beautiful coloration may make it a desirable addition to private collections. Because the Karner blue butterfly's numbers are so low throughout its range, additional taking or collecting for any purpose other than part of a carefully planned recovery action may eliminate some populations and hamper recovery efforts.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Karner blue butterfly is listed as endangered or threatened by several states:

In New York, the Karner blue butterfly is listed as endangered, and the animals and parts thereof, including eggs and larvae, are protected from unauthorized take, import, transport, possession, or sale.

The State of Minnesota lists the Karner blue butterfly as a threatened species. Minnesota law protects state listed animals from take, import, transport, or sale.

In New Hampshire, the Karner blue butterfly is listed as endangered and is protected from unauthorized taking. While New Hampshire law directs other State agencies to avoid funding, carrying out, or authorizing actions that result in the destruction of essential habitat, it has not prevented the loss of habitat through development of private property. Wild lupine is listed by New Hampshire as an endangered plant species. It is protected by the New Hampshire Native Plant Protection Act of 1987, which is implemented by the New Hampshire Natural Heritage Inventory within the Department of Resources and Economic Development. However, this legislation does not prevent alteration of wild lupine habitat on private land with the landowner's permission.

In Wisconsin, the Karner blue butterfly has been recommended for addition to the State list as threatened, and the Department of Natural Resources reports that it hopes to formally propose the listing during 1992 (Besadny *in litt.*, 1992). In addition to protection from take at occupied sites, Wisconsin law provides for protection and management of habitat of State listed species on public lands, where a significant proportion of Wisconsin Karner blue occurrences are found.

In Michigan, the Karner blue butterfly is listed as a threatened species. Michigan law prevents taking of listed animals and protects occupied habitat, and would thereby afford protection for eggs and larvae at known sites.

The State of Indiana currently does not have an official State list for insects.

The Karner blue butterfly has not been listed by the State of Illinois due to the fact that it was believed extirpated in that State. With the recent rediscovery of a population, Illinois is likely to list the Karner blue as endangered, although Federal listing will automatically place the species on the Illinois endangered species list (S. Lauzon, pers. comm., 1992). Under Illinois State law, all life forms of listed species are protected from take, and therefore, known occupied habitat would also receive some protection. Some additional habitat protection is also provided to listed species through a provision requiring a consultation process to assess the impacts or actions authorized, funded, or carried out by State or local governments (S. Lauzon, *in litt.*, 1992).

While most states with extant Karner blue butterfly populations have legislation which protects the animals, provisions for protection and management of the habitat are incomplete to non-existent. Destruction and alteration of habitat are major reasons for the butterfly's decline.

Some populations of Karner blue butterflies occur on Federal, State, or privately owned parks, wildlife refuges, or preserves and are thereby recognized and protected. However, this protection has not prevented the range-wide declines of the Karner blue and its habitat due to the reasons discussed in Section A above, and Section E below.

The pine barrens and oak savannas where the Karner blue butterfly occurs are uplands underlain by extremely well-drained sandy soils and are thus afforded no protection by Federal or State wetland regulations. Upon Federal listing of the Karner blue butterfly, there will be additional protection provided from take or transport of the species, and from habitat alteration carried out, funded, or authorized by Federal agencies. The Endangered Species Act also provides for needed habitat management through the recovery process.

E. *Other natural or manmade factors affecting its continued existence.* The presence of wild lupine is essential to the occurrence and survival of the Karner blue butterfly. Unaltered by humans, a pine barren ecosystem is likely to be a mosaic of interspersed woody vegetation, such as pitch pine (*Pinus rigida*) and scrub oak (*Quercus ilicifolia*) and more open areas characterized by wild lupine, grasses, and other plants such as spreading dogbane (*Apocynum androsaemifolium*) and New Jersey tea (*Ceanothus americanus*) which serve as nectar sources for adult butterflies (The Nature Conservancy 1990).

Historically, the pine barren and oak savanna communities were maintained by naturally occurring, periodic fires that released nutrients and created openings favorable for wild lupine and other low growing plants. Residential and commercial development in and adjacent to these areas has lead to fire suppression. Without fire, vegetational succession to unsuitable habitat occurs on interspersed undeveloped areas. In the absence of fire, many areas once dotted with openings and wild lupine are now dominated by forest, with little or no understory. Fire suppression has affected habitat throughout the range of the Karner blue butterfly.

Since no life stage of the Karner blue butterfly is completely resistant to fire, recently burned lupine sites must be colonized by Karner blue butterflies from nearby unburned sites (Schweitzer 1989, Givnish *et al.* 1988). Maintenance of the Karner blue butterfly depends on its ability to disperse to newly expanded wild lupine sites (Zaremba 1991, Givnish *et al.* 1988, Schweitzer 1989). Fragmentation of remaining habitat prevents dispersal and results in small isolated populations.

With small, isolated, and declining populations, the subspecies is highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors, or reproductive strategy, will prevent the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). Natural fluctuations in rainfall, host plant vigor, or predation may weaken a population to such an extent that recovery to a viable level would be impossible. Isolation prevents recolonization by butterflies from other metapopulations, resulting in extinction.

Small remnant populations are highly vulnerable to a variety of factors. Weather events can eliminate such populations, as exemplified by the failure of the Ontario, Canada remnant to survive the impacts of drought in 1988, followed by unusually cold weather in May and June of 1989 (D. Schweitzer, *in litt.*, 1991). This population was estimated by Schweitzer to be around 1000 adults in July 1984, which is better than all but a few of the populations remaining today. Its demise occurred within five or six years, despite habitat acquisition and protection. Weather events can affect the species and its habitat throughout its range, pointing out the fragility of the many small, and even the larger, remaining remnant populations. Improper management of existing wild lupine habitat, including untimely mowing, the improper use of herbicides along highways and power line rights-of-way, and poorly timed and/or configured burns, also threaten remnant populations (D. Schweitzer, *in litt.*, 1991, Bleser 1990, Zaremba 1991).

Browsing of wild lupine by deer, rabbits, and/or woodchucks also poses a threat (D. Sperduto, pers. comm., 1991; D. Schweitzer and D. Savignano, 1992, in Givnish *et al.* 1988). A relationship between the scarcity of adult nectar sources and Karner blue butterfly abundance has also been observed (Bleser 1990; D. Sperduto, pers. comm., 1991). Flowering of nectar plants like New Jersey tea (*Ceanothus americanus*) can get out of synchrony with the adult butterflies; therefore, lack of diverse nectar plants may contribute to Karner blue population declines, especially in the western part of its range (D. Schweitzer, *in litt.*, 1992).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this subspecies in determining to finalize this rule. Based on this evaluation, the preferred action is to list the Karner blue butterfly as endangered. It has been extirpated from three states in the U.S., is virtually extirpated from Canada, and has undergone significant decline in all six states with remaining populations. Due to the magnitude of the range-wide decline of the Karner blue butterfly, particularly within the past decade, and the continuing threats from destruction, succession, and fragmentation of its habitat, this butterfly is in need of Federal protection if it is to survive. These factors support listing the Karner blue butterfly as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act is amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed for listing as endangered or threatened. Section 3 of the Act defines critical habitat as, "(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." Designation of critical habitat is prudent unless: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Designation of critical habitat is determinable unless: (1) Information sufficient to perform the required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat for the Karner blue butterfly is not presently determinable. Most existing populations of this butterfly are located on highly fragmented habitat of declining suitability. The size, spatial configuration, and juxtaposition of habitat areas required to provide for the long-term survival of existing populations have not been identified. Range-wide conservation of the Karner blue butterfly may also require protection and/or restoration of habitat in areas where the species is now extirpated. In addition, information needed to analyze the impacts of critical habitat designation is unavailable at this time.

Since publication of the proposed rule, the Service has initiated efforts to obtain the information needed to determine critical habitat for the Karner blue butterfly. A population and habitat viability analysis (PHVA) workshop was conducted by the IUCN/SSC Captive Breeding Specialist Group and a symposium on the Karner blue butterfly was held during April 1992. Researchers, species experts, agency representatives, and interested individuals from across the Karner blue butterfly's range participated in the workshop and symposium. Information from the symposium and the forthcoming report on the results of the PHVA will be used in determining critical habitat for the Karner blue butterfly.

When the Service finds that critical habitat is not determinable at the time of listing, regulations (50 CFR 424.17(b)(2)) provide that the designation of critical habitat be completed within two years of the date of the proposed rule to list the species. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under Section 4(b)(2) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement under section 7 is expected for management and other land use activities on Federal lands with Karner blue butterfly populations. The Fish and Wildlife Service and the National Park Service are currently conferring about the effects of proposed prescribed burning of Karner blue habitat at Indiana Dunes National Lakeshore. Other Federally-administered locations include U.S. Forest Service lands in Michigan, lands in New Hampshire for which the U.S. Fish and Wildlife Service holds conservation easements, and U.S. Fish and Wildlife Service National Wildlife Refuge lands and Department of Defense lands in Wisconsin. Activities which are funded, regulated, or carried out by the Federal Aviation Administration involving the airport lands in New York and New Hampshire where Karner blue butterflies occur will require section 7 consultation. Some development projects involving Karner blue butterfly sites could require authorization from the U.S. Army Corps of Engineers (Corps) for certain project related activities in regulated waters or wetlands of the United States. The Corps is reviewing a permit application for a proposed marina that may adversely affect the newly rediscovered Illinois population.

Listing the Karner blue butterfly will encourage additional research and provide for the development of needed habitat protection and management strategies through the recovery process. Additional information is needed on specific habitat characteristics such as plant community species and structure, soil dryness, shading, and other factors that may affect the suitability of the habitat for Karner blue butterflies. Likely recovery activities would also include continued monitoring, evaluation of habitat management techniques, development of site-specific protection and management plans, and investigations into re-establishing populations.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mark W. Clough (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife, under "INSECTS".

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
• •	• •	•	•	•		•	
INSECTS							
• •	• •	•	•	•		•	
Butterfly, Kamer blue	*Lycaeides melissa samuelis* U.S.A. (IL, IN, MA, MI, MN, NH, NY, OH, PA, WI, Canada (Ont.).	NA	E	484	NA	NA	
• •	• •	•	•	•		•	

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30173 Filed 12–11–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for Five Aquatic Snails in South Central Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four Snake River aquatic snails: The Idaho springsnail or Homedale Creek springsnail (*Pyrgulopsis* (—*Fontelicella*) *idahoensis*), the Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), and the undescribed Banbury Springs lanx or limpet in the genus *Lanx*. The Service also determines threatened status for one aquatic snail species, the Bliss Rapids snail (an undescribed monotypic genus in the family Hydrobiidae). With the exception of *Lanx*, four of the taxa have declined over all but a small fraction of their historical range. Today these five species are currently restricted to a few isolated free-flowing reaches or spring alcove habitats in the middle Snake River characterized by cold, well-oxygenated, unpolluted water. *Lanx* has remained relatively stable at three known locations since its discovery in 1988. However, because, *Lanx* is known only from three sites it is most vulnerable to habitat change. The free-flowing, cool water environments required by these species have been impacted by and are vulnerable to continued adverse habitat modification and deteriorating water quality from one or more of the following: hydroelectric development, peak-loading effects from existing hydroelectric project operations, water withdrawal and diversions, water pollution, and inadequate regulatory mechanisms. This is especially true for those species restricted to mainstem river environments, *Physa natricina* and *Pyrgulopsis idahoensis*, but also mainstem colonies of Bliss Rapids snails and *Valvata utahensis*. These mainstem populations or colonies may also be vulnerable to habitat competition from an exotic snail (*Potamopyrgus antipodarum*). With the exception of several spring habitats at a privately owned preserve in the Thousand Springs area, remaining pristine spring and spring stream complexes in the middle Snake River preferred by *Lanx*, Bliss Rapids snail and Utah valvata are not protected from all potential threats described above. This rule implements the protection and recovery provisions afforded by the Act for these aquatic snails.

EFFECTIVE DATE: January 13, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Boise Field Office, U.S. Fish & Wildlife Service, 4696, Overland Road, Room 576, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Lobdell at the above address (telephone 208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

The Idaho (Homedale) Springsnail (*Pyrgulopsis-Fontelicella idahoensis*), Bliss Rapids snail (Family Hydrobiidae n. sp.), Banbury Springs lanx or limpet (*Lanx* n. sp.), Snake River Physa (*Physa natricina*), and Utah Valvata snail (*Valvata utahensis*) are part of the native mollusc fauna of the middle Snake River which characteristically require cold, fastwater or lotic habitats. These five species are part of the freshwater mollusc fauna of the middle Snake River comprising 37 native species including 22 taxa of snails in eight families and 15 clam species in three families (Frest *et al.* 1991). Although many of these 37 species display widespread geographic distribution and a greater tolerance for pollution, the five lotic species are limited geographically and generally intolerant of pollution. The "middle" Snake River is defined as extending from C.J. Strike Reservoir (river mile 517.6) upstream to Milner Dam (river mile 639.1). With few exceptions, extant populations of the five taxa are confined to this reach; although prior to river development and impoundment these and other native molluscs "extended beyond these artificial and manmade boundaries" (Frest *et al.* 1991).

The lotic fauna of the middle Snake River have been declining for several years due to fragmentation of remaining free-flowing habitats and deteriorating water quality. Hydroelectric development throughout the Snake River has directly impacted the candidate species through inundation of lotic habitats, isolating segmented populations, and impacting suitable shallow water shoreline habitat from project-caused flow fluctuations. Water quality continues to degrade in the middle Snake River from increased water use and withdrawal, aggravated by recent drought induced low flows. This 121 mile (195 kilometer) stretch of the Snake River is impacted by agricultural return flows; runoff from between 500 and 600 dairies and feedlots; effluent from over 140 private, state, and Federal fish culture facilities; and point source (e.g. municipal sewage) discharge (Idaho Department of Health and Welfare (IDHW) 1991a). These factors contribute to increased nutrient loads and concentrations which in turn adversely impact the lotic species. Nutrient loading contributes to dense blooms of free-living and attached

filamentous algae, which the species cannot utilize. This algae will often cover rock surfaces, effectively displacing suitable snail habitats and food resources. Stream sediments also become anoxic as high biochemical oxygen demand during the aquatic growing season and seasonal algae dieoffs occur.

The Bliss Rapids snail, Idaho springsnail, and Snake River Physa snail are "living fossils," in that they are relicts from ancient lakes. The Bliss Rapids snail and Idaho springsnail are survivors of the late Pliocene (Blancan) Lake Idaho, which covered much of southern Idaho. The Snake River Physa snail is a relict from Pleistocene lakes and rivers in the area (Taylor 1988). The Utah valvata snail survives only in the Snake River, Idaho, a fraction of its former range in Pliocene-Pleistocene lakes and rivers covering parts of California, Nevada, Idaho, Wyoming and Utah (Taylor 1985b). Fossil material of the Pliocene *Lanx* is needed to confirm the identity of the newly discovered species as being conspecific with the Lake Idaho *Lanx*, though this is a new species in any case.

The Bliss Rapids snail (Family Hydrobiidae, n. sp.) was first collected live and recognized as a new taxon in 1959 (Taylor 1982a), but has not yet been described in the literature. This snail is 2.0–2.5mm (0.8–.10 in) long, with three whorls, and is roughly ovoid in shape. There are two color variants or morphs in the Bliss Rapids snail, the colorless or "pale" form and the orange-red or "orange" form. The pale morph is slightly smaller with rounded whorls with more melanin pigment on the body (Frest and Johannes 1992a). This snail occurs on stable, cobble-boulder substratum only in flowing waters in the unimpounded reaches of mainstem Snake River and also in a few spring alcove habitats in the Hagerman Valley. The species does not burrow in sediments and normally avoids surfaces with attached plants. Known river populations (or colonies) of the Bliss Rapids snail occur only in areas associated with spring influences or rapids edge environments and tend to flank shorelines. They are found at varying depths if dissolved oxygen and temperature requirements persist and are found in shallow (<1cm (.4 in)) permanent cold springs (Frest and Johannes 1992a). The species is considered moderately photophobic and resides on the lateral sides and undersides of rocks during daylight (Bowler 1990). The snail will migrate to graze on aufwuchs (or perilithon) on the uppermost surfaces of rocks nocturnally. The species can be locally quite abundant, and it is especially abundant on smooth rock surfaces with common encrusting red algae. The largest known concentration of Bliss Rapids snails occurs at The Nature Conservancy's (Conservancy) Thousand Springs Preserve (Preserve) with an adult population estimated in the "low millions" (Frest and Johannes 1992a). Reproduction in the Bliss Rapids snail varies according to habitat; occurring October–February in mainstem Snake River colonies and February–May in large-spring colonies. Egg laying occurs within two months of reproduction and eggs appear to hatch within one month. Adult snails exhibit a strong seasonal die off after reproduction. Turnover appears more pronounced in mainstem river colonies, possibly due to environmental stress (Frest and Johannes 1992a). Prior to 1987, the Bliss Rapids snail was known primarily from the mainstem Snake River boulder bars above King Hill (approximately river mile 546) to lower Salmon Falls Dam (river mile 573) and upstream in Box Canyon Sprigs (river mile 588). Taylor (1982a) believed that "* * * prior to dam construction there was probably a single population throughout this range, and plausibly upstream as well." Subsequent mollusc surveys by Frest (1991b), Pentec (1991b) and Taylor (1987) found new subpopulations of the Bliss Rapids snail in the mainstem Snake River and adjacent spring habitats. Pentec (1991b) extended the present known range of the species upstream approximately 162 miles when it found specimens in spring habitats above American Falls at river mile 749.8. Based on live collections, the species currently exists as discontinuously distributed populations over 204 river miles within its historic range. These populations are primarily concentrated in the Hagerman reach in tailwaters of Bliss and Lower Salmon Dams and several unpolluted springs (i.e., Thousand Springs, Minnie Miller Springs, Banbury Springs, Niagara Springs, and Box Canyon Springs).

Call (1884) described the Utah valvata snail (*Valvata utahensis*) from Utah Lake, Utah, as *Valvata sincera* var. *utahensis*. Walker (1902) revised the genus *Valvata* and determined *V. utahensis* to be a species. The Utah valvata snail is 4.5mm (.2 in) long, the shell is turbinate (about equally high and wide) with up to four whorls. In the Snake River, *V. utahensis* lives in deep pools adjacent to rapids or in perennial flowing waters associated with large spring complexes. The species avoids areas with heavy currents or rapids. The snail prefers well-oxygenated areas of non-reducing calcareous mud or mud-sand substrate among beds of submergent aquatic vegetation. The species is absent from pure gravel-boulder bottoms. *Chara*, which concentrates both calcium carbonate ($CaCO_3$) and silicon oxide (SiO_2), is a common associate. The Utah valvata snail is primarily a detritivore, grazing along the mud surface ingesting diatoms or powdery plant debris. In habitats with boulders on mud, the snail has been observed grazing diatoms and other perilithon on rocky surfaces and macrophytes. The Utah valvata snail historically occurred from river mile 492 (near Grandview) to river mile 585 just above Thousand Springs with a disjunct population in the American Falls Dam tailwater near Eagle Rock damsite at river mile 709. The taxa was known historically from northern Utah, although recent mollusc surveys throughout the State revealed no live sites and the species is believed extirpated there (Clarke 1991). At present this species occurs in a few springs and mainstem Snake River sites in the Hagerman Valley and at a few sites below American Falls Dam downstream to Burley (Beak 1987; Taylor 1987). Recent surveys at the Conservancy's Preserve revealed declines in numbers and areal extent of Utah valvata over a four year period (Frest and Johannes 1929a). Live colonies of this snail persist in only two areas at the Preserve with a total population at each colony estimated not to exceed 6000 individuals. Density varied but averaged six live individuals counted per quarter meter square within each colony.

The Snake River Physa snail was named *Physa natricina* and described by Taylor in 1988. Fossil records of the species occur in deposits from Pleistocene-Holocene lakes and rivers from southeastern Idaho and northern Utah. The type locality is the Snake River, Gooding County, Idaho. The shells of adult Snake River Physa snails are about 5–7mm (.2–.3 in) long with 3–3.5 whorls. Fresh shells are amber to brown in color. The species occurs on the undersides of gravel to boulder substratum in swift current in the mainstem Snake River. Living specimens have been found on boulders in the deepest accessible part of the river at the margins of rapids. Taylor (1982c) believed much of the habitat for this species was in deep water beyond the range of routine sampling. Taylor (1988) cites collections of this species from 1956 through 1985 and considered its "modern" range in the Snake River to extend from Grandview (based on

empty shells) upstream through the Hagerman Reach (river mile 573).

Taylor also believes that the Grandview subpopulation has become extinct since the early 1980's ". . . as the native bottom fauna has been virtually eliminated in this segment of the Snake River." Live specimens of the Snake River Physa were recorded near river mile 675 in 1987 (Beak 1987). Pentec (1991b) also reported single live animals at river miles 740.2 and 749.1, although Frest (1991d) believes these may be immature *Physella integra* or *Physella gyrina* and identification needs confirmation. Recent comprehensive snail surveys in southeastern Idaho and northern Utah (Frest *et al.* 1991) and in a free-flowing reach near Buel (Frest and Johannes 1992a) failed to find live specimens. At present, *Physa natricina* remains at only a few locations in the Hagerman and King Hill reaches, with a disjunct population near Minidoka Dam (river mile 675). Live Snake River Physa snails are always rare at collection sites; it is believed that fewer than 50 live Snake River Physa have been collected in the middle Snake River (Frest *et al.* 1991).

Using material collected near Homedale, Idaho by H.M. Tucker in 1930, H.A. Pilsbry described the Idaho (Homedale) springsnail as *Amicola idahoensis* (Pilsbry 1933). Gregg and Taylor (1965) established the new genus *Fontelicella* and placed *F. idahoensis* in the proposed new subgenus *Natricola*. Hershler and Thompson (1987), in a recent re-evaluation of North American hydrobiidae systematics, revised the genus and assigned *Fontelicella* to the genus *Pyrgulopsis*.

The Idaho springsnail has a narrowly elongate shell reaching a length of 5–7mm (.2–.3 in), with up to 5.5–6 whorls. This species is found only in permanent, flowing waters of the mainstem Snake River; the snail is not found in any of the Snake River tributaries or in marginal springs (Taylor 1982d). The species occurs on mud or sand associated with gravel to boulder size substratum. It is often attached to vegetation (e.g. *Potamogeton*) in riffles. Very little is known of the life history. The Idaho springsnail is a Lake Idaho endemic, and in fossil form has the same potential relic range as the Bliss Rapids snail (Frest 1991c). Historically, the Idaho springsnail was found from river mile 415 (Homedale) to river mile 553 and has been collected at 10 locales. It is currently discontinuously distributed in the mainstem Snake River at a few sites from the headwaters of C.J. Strike Reservoir at river mile 518 upstream to approximately river mile 553 (Bancroft Springs), a reduction of nearly 80 percent from its historic range. Based on repetitive visits to previous sampling sites, the species has declined and populations are small.

The Banbury Springs lanx or limpet (*Lanx* n. sp.) is a member of the Lancidae, a small family of pulmonates endemic to western North America. The species was first discovered by Terrence J. Frest in Banbury Springs Creek in 1988 and has not yet been formally described. The species is distinguished with a shell of uniform red cinnamon color, a subcentral apex, with its length and height exceeding its width. The species has been found only in spring run habitats with well oxygenated, clear, cold (15–16°C) waters on boulder or cobble substratum. All known locations have relatively swift currents. They are found most often on smooth basalt and avoid surfaces with large aquatic macrophytes or filamentous green algae. Beak Consultants, Inc. (Beak) (1989) reported the species (specimens originally identified as *Fisherola nuttalli*) at depths ranging from 30 to 75 cm (11.8–29.5 in) on boulder substratum. Frest and Johannes (1992a) found the species in water as shallow as 5 cm (2 in), but depths up to 15 cm (6 in) were more typical. All lancids are susceptible to dissolved oxygen fluctuations since respiration is accomplished only through the mantle; lungs, gills, and other specialized respiratory structures are lacking (Frest and Johannes 1992a). Common mollusc associates of this species include the Bliss Rapids snail and vagrant pebblesnail (*Fluminicola hindsi*).

This limpet was first discovered in 1988 at Banbury Springs (river mile 589) with a second population found in nearby Box Canyon Springs in 1989 (river mile 588). During 1991, a mollusc survey at the TNC's Preserve revealed a third population in the outflows of Minnie Miller Springs (river mile 584.6) (Pentec 1991b). Subsequent to this discovery, a more detailed investigation at the Preserve revealed that the single colony was sporadically distributed within an area of only 12–14 m^2 (Frest and Johannes (1992a). Population density was in the range of 4–48 per m^2. The total adult population at the Preserve was estimated at between 600 to 1,200 individuals. It should be noted that all three populations of *Lanx* were found in alcove spring complexes previously surveyed. These spring complexes contain large areas of adjacent presumably identical habitat not occupied by the species. At present the Banbury Springs lanx is known to occur only in the largest, least disturbed spring habitats at Banbury Springs, Box Canyon Springs, and Thousand Springs between river miles 584.8 and 589.4. Today, these three locations are variously affected by ongoing water withdrawal and agricultural return flows.

Based on the fossil record, the five candidate snails are endemics originating in the area within Pliocene Lake Idaho and its Pleistocene successors (Taylor 1966). In general, the fossil record shows a larger past than current distribution, with past populations considered continuous throughout their range. An exception is the case of obligate spring species such as the Banbury Springs lanx; each geographically isolated spring could be considered a different population (Frest 1991c).

Ecologically, these five species share many habitat characteristics, and in some locations two or more are sympatric. Basically, they require cold, clean, well-oxygenated flowing water of low turbidity. All the species except the Utah valvata, and possibly the Idaho springsnail prefer gravel to boulder size substratum. Despite these affinities, each of the five species have slightly different habitat preferences. The Idaho springsnail and Snake River Physa are found only in the free-flowing mainstem Snake River while the remaining three candidates are usually associated with spring or spring-like river habitats. For example, the Bliss Rapids snail can be found in both small, shallow spring or large, deep spring outflows, while the Banbury Springs lanx is known only in large spring outflows. The Utah valvata snail is able to tolerate slower flowing environments with silty vegetated substrate better than the rest, although it cannot tolerate true impoundment or reservoir conditions (Frest 1989b). In the mainstem river, they are found in areas of the river not subject to daily or seasonal fluctuations. None of the species tolerate whitewater areas with rapid flow. The species also share similar life history characteristics related to longevity. With the possible exception of Snake River Physa and Utah valvata, the species are considered annual species with an average longevity of one year. Bliss Rapids snail and Banbury Springs lanx experience a dieoff of older adults during the late winter-early spring season following reproduction, although for the Bliss Rapids snail the dieoff is less pronounced in large-spring colonies (Frest and Johannes 1992a). Utah valvata are believed to have a maximum longevity of two years, although a majority only survive a single year. Although little is known of general life history for Snake River Physa, longevity

likely coincides with related *Physa* sp. and other pulmonates, averaging two years. Implications to survival of the candidate species is that annual species with localized distribution and small populations become vulnerable to extirpation from stochastic and/or catastrophic changes in environmental events. The remaining free-flowing river and spring/spring outflow habitats for these species has been fragmented between several impounded reaches of the Snake River in southern Idaho. The Swan Falls, C. J. Strike, Bliss, Lower Salmon Falls, and Upper Salmon Falls Dams on the mainstem Snake River inundated free-flowing habitat and have extirpated populations of these species. Past diversion of large spring outflows for hydroelectric and agricultural purposes have destroyed habitat for Bliss Rapids and Utah valvata snails in Box Canyon (Taylor 1985a) and Thousand Springs. Another more recent threat is the discovery of the New Zealand mudsnail (*Potamopyrgus antipodarum*) in the middle Snake River. The eurytopic mudsnail is experiencing explosive growth in the river and shows a wide range of tolerance for water fluctuations, velocity, temperature and turbidity. The species seems to prefer warmer, polluted waters over pristine cold spring environments. At present, it is not abundant in habitats preferred by Banbury Springs lanx, Bliss Rapids snail, or the Utah valvata. However, the species does compete directly for habitats of the Snake River Physa and Idaho springsnail in the mainstem Snake River. Today these endemic species remain only in a few isolated free-flowing segments between the dams and for some species, a few spring tributaries of the Snake River (Taylor 1982a, b, c, and d, Frest 1989a).

The bed of the Snake River is held in Public Trust by the State of Idaho. Snake River water flowing over the bed is subject to State and Federal water law and water can be appropriated for beneficial uses. Water in Box Canyon Springs Creek is also subject to appropriation. Land in the upper half of Box Canyon Springs Creek is privately owned and developed by Earl M. Hardy. Land in the lower end of Box Canyon Springs Creek is managed by the Bureau of Land Management (Taylor 1985a). Much of the remaining free flowing spring habitat at Thousand Springs is owned by The Nature Conservancy; jointly purchased by the Conservancy and Idaho Power Company in 1986.

This purchase provided protection for the nearly four miles of spring outflows and Minnie Miller Lake from further appropriation and development. However, there are indications that water quality in some of the spring outflows is impacted by irrigation and aquaculture return flows initiating outside the Preserve's boundaries (Frest and Johannes 1992a).

Listing the subject species will result in increased protection of remaining free-flowing river and large spring habitat required by these and other sensitive native species such as the shortface lanx or giant Columbia River limpet (*Fisherola nuttalli*) (Taylor 1982a,b,c and d) and the Shoshone sculpin (*Cottus greenei*). These areas contain some of the last mainstem Snake River habitats with the full range of native molluscan species present, and thus represent a unique aquatic community.

Federal action on these five mollusks began in part as a result of several petitions submitted under section 4(b)(3) of the Act. Dr. Peter Bowler submitted a petition to list the Snake River Physa snail and the undescribed Bliss Rapids snail as endangered on February 7, 1980. A finding that this petition presented substantial information that the requested action may be warranted was published on April 23, 1980 (45 FR 27723). The Idaho springsnail was the subject of a petition submitted on November 12, 1987, by Dr. Bowler. The Service published on December 29, 1988, a finding that the petition to list the Idaho springsnail presented substantial information that listing may be warranted for this species. The Service initiated status reviews on these three species.

Section 4(b)(3)(B) of the Act requires the Service to make a finding within 1-year of the date a petition is received as to whether or not the requested action is warranted. If the Service finds that the requested action is warranted, but precluded by other pending proposals of higher priority, the Service must reevaluate the petition annually and make findings on whether or not the requested action is warranted. In the case of the Snake River Physa and Bliss Rapids snails, the first 12-month finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Annual warranted, but precluded, findings were in effect from 1984 through publication of the proposed rule on December 18, 1990 (55 FR 51931).

Randall Morgan and others petitioned the Service to list an undescribed species in the genus *Lanx*, the Banbury Springs lanx, as endangered using the emergency provisions of the Act on November 13, 1989. Whereas the Service's status review did not disclose the existence of an emergency within the meaning of section 4(b)(7) of the Act, it did indicate that proposing the *Lanx* for listing under the normal procedures of section 4 is warranted.

All of the subject species except the Banbury Springs lanx have been included as candidate species on the Service's notices of review. The Snake River Physa snail and the Bliss Rapids snail were first included as category 1 candidates in the 1984 Review of Invertebrate Wildlife (49 FR 21664); they retained this status in the January 6, 1989 Animal Notice of Review (54 FR 554). Category 1 candidates are those taxa for which the Service has on file enough substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. The Utah valvata snail appeared on the 1984 Review of Invertebrate Wildlife as a category 2 candidate, and remained as such on the 1989 Animal Notice of Review. The Idaho springsnail was first included as a category 2 candidate on the 1989 Animal Notice of Review. Category 2 candidates are taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive date on biological vulnerability and threat are not currently available to support proposed rules. The November 21, 1991 Animal Notice of Review (56 FR 58804), reflecting the proposed status of these taxa, included all five snails as "PE" (proposed for listing as endangered).

Based upon the petitions, status surveys, and other information on file, the Service published a proposed rule on December 18, 1990 (55 FR 51931) to list as endangered five aquatic snails: the Bliss Rapids snail, Snake River Physa snail, Idaho Springsnail, Utah valvata snail and the Banbury Springs lanx or limpet. The proposed rule included information provided by Taylor (1982 a, c, d, and 1988) and Frest (1989b) on the Bliss Rapids, Idaho spring, and Snake River Physa snails, by Taylor (1982b) for the Utah valvata snail, and by Frest (1989a) and the Service for the Banbury Springs lanx.

The Service now determines the Idaho springsnail, the Utah valvata snail, Snake River Physa snail, and Banbury Springs lanx to be endangered species and the Bliss Rapids snail to be a threatened species with publication of this rule.

Summary of Comments and Recommendations

In the December 18, 1990 proposed rule, all interested parties were requested to submit comments or

information that might contribute to the development of a final determination. The public comment period ended on February 19, 1991. On March 18, 1991, the Service published a Federal Register notice announcing public hearings and reopening and extension of the comment period through April 30, 1991 (56 FR 11401). Announcements of the proposed rule and the upcoming hearings were also published in two newspapers on March 18, 1991: the Idaho Statesman and the Twin Falls Times-News. Public hearings were held from 7 to 10 p.m. on April 3, 1991 in Boise, Idaho, and from 2 to 4 p.m. and 7 to 9 p.m. on April 4, 1991 in Hagerman, Idaho. Thirty-two commenters presented oral testimony. On June 4, 1991, the Service requested that C. Michael Falter, University of Idaho, assemble a panel of experts to review and summarize the existing technical knowledge on the status of the five snail species. To accommodate the technical review meeting and receive additional comments, the Service published a third notice, on October 7, 1991, reopening the comment period through October 31, 1991 (56 FR 50550). The technical review meeting was held on October 21–22, 1991, in Boise, Idaho with six participants. Three additional mollusc experts were invited but did not attend. However, these individuals did participate in a later review of the meeting summary and submitted detailed review comments and additional substantive information. The final Summary Report of the Technical Review Meeting was received by the Boise Field Office on March 26, 1992 (Falter 1992).

Ninety-eight written comments were received on the proposed rule. The Service considered all comments received, including oral testimony from two public hearings on the proposal to list the five aquatic snails. A majority of comments (n=60) supported the proposed rule. Opposition to the proposed rule was based on several factors, including the assertion that the proposed rule was based upon incomplete sources of knowledge on the true distribution and abundance of the snails. Five written comments opposed the proposed listing and eight letters requested a public hearing. In addition, three Idaho State agencies provided written comments. The Idaho Department of Parks and Recreation wrote in support of the listing, while the Idaho Department of Water Resources expressed interest in the listing proposal and requested the Service undertake an ". . . analysis of the constraints a listing would have on existing and proposed projects in the designated reach . . ." The Idaho Division of Environmental Quality also submitted water quality study information for the Snake River. Several commenters provided new and substantive biological information applicable to the listing decision. Other comments provided information pertaining to further research needs and recovery planning. Such information will be useful in the development of a recovery plan. Comments of a similar nature or point are grouped for consideration and response. A summary of these issues and the Service's response to each, are discussed below.

Issue 1: One respondent believed that ". . . from taxonomic and morphological perspective, four of the species identified in the proposals are snails while the fifth is a limpet. Therefore the Service should substitute the term mollusks for snails in the title."

Service response: Limpet is the common and standardized term used by malacologists when referring to snails with low conical or cap shaped shells that have lost their coiled character. Specifically, the work was first applied to marine snails (gastropods=molluscs) with a non-coiled shell having an imperforate apex. This shell form is believed to have evolved separately in many different snail lineages to provide a more hydrodynamic contour in heavy currents. The Service considers use of the term "snails" to describe the subject species in the final rule both appropriate and proper.

Issue 2: Several comments addressed the question of the Banbury Springs lanx or limpet (*Lanx sp.*) status as a separate taxon. This species shows gross morphological similarity to another candidate Snake River lancid, the shortface or giant Columbia River limpet (*Fisherola nuttali*). One commenter believed that further taxonomic corroboration is needed for discriminating *Lanx* vs. *Fisherola* ". . . before a "new" genus-species is recommended for endangered status." Some commenters also maintain that there has been some confusion regarding misidentifications of the Banbury Springs and *F. nuttali* from specimens collected in Box Canyon Springs (Beak 1989). Specifically, they refer to differences in species identification by Dwight Taylor and Terrence Frest for several lancid specimens from the same vial provided by Richard Konopacky.

Service response: The Service has considered available scientific evidence and concludes that the Banbury Springs lanx (*Lanx sp.*) and *F. nuttali* are distinct taxa and spatially segregated. Shell features are the primary morphological discriminants distinguishing the Banbury Springs lanx and *F. nuttali*. These features include shell apex location and orientation, shape of the posterior and anterior side, color, maximum dimensions, and ratios of standard shell measurements (Frest 1991d). The two species are also segregated ecologically. The Banbury Springs limpet has been collected only from spring habitats at three locations and there is no evidence of its occurrence in the mainstem Snake River. *Fisherola*, on the other hand, is known to occur only in the mainstem middle Snake River and other mainstem Columbia basin rivers and has not been found in springs. Regarding the conflicting identification by Taylor and Frest of some lancid specimens collected from Box Canyon Springs, the Service notes that the differences were most likely due to confusion from using unlabeled vials. Frest (1991a) recently collected and examined several lancids from Box Canyon and also examined collections by Taylor (dead) and Konopacky (specimens in question); he concludes that only one lancid species is present, the Banbury Springs lanx.

Issue 3: Several commenters contend that the Service failed to evaluate and incorporate information in their possession prior to publication of the proposed rule. They believed that this information indicated the candidate species are more widely distributed and abundant than indicated in the Service's proposed rule and therefore the species should not be listed.

Service response: The information in question was unpublished data on snail range and distributions in the mid-Snake river collected in a study by Beak Consultants, Incorporated during 1987. Snail field data and locations for the species of interest were submitted to the Boise Field Office on February 19, 1990. According to the author of the proposed rule (Jay Gore, U.S. Forest Service, formerly Fish and Wildlife Service, pers. comm.), the information was in draft or field note form and was not easily interpretable. The Service is requested that the information be resubmitted in a form that was more easily interpretable during the open comment period following publication of the proposed rule. This information has been evaluated and incorporated into the final rulemaking process.

Issue 4: Several commenters requested that the Service delay or preclude listing the five aquatic snails because too little is known regarding their present status. They believed there was inadequate and insufficient sampling in past mollusc surveys to

describe overall distribution and abundance. For example, statements to the effect that: (1) Less than 1 percent of the middle Snake River has been sampled; (2) the proposed rule is based on earlier surveys that failed to adequately sample deepwater and other "hard to sample" habitats; and (3) recent limited surveys have located new populations, which greatly expand the "present range" of some of these species; these facts ". . . suggest that even very limited additional efforts will uncover new populations and that all representative habitat has not been examined." Several commenters argued against the listing asserting that sampling for mulluscs exhibiting localized and discontinuous distribution using non-randomized, biased sampling (or sampling "where their previous experience and prior knowledge dictate"—Steinhorst 1992) will likely miss existing populations; therefore conclusions regarding current distribution in previous studies were not statistically valid. They also contend that failure to locate populations of molluscs exhibiting discontinuous distribution should be expected when using this type of "flawed" sampling. Several respondents also suggested that the Service initiate a comprehensive, statistically-based studies program for these species to develop additional data on spatial distribution and habitat requirements prior to any final listing decision.

Service response: The listing process includes an opportunity for the public to provide input and new information is evaluated and considered before a final determination is made. Aside from previously cited studies and reports in the proposed rule, the Service has reviewed and considered new information regarding distribution and general life history for the five candidate species for eight recent mollusc surveys in the Snake River basin. The Service used information only from sites where "live" specimens were found to evaluate and establish current geographic range. The use of dead specimens or shells to establish current range can be misleading since identification for some species may be difficult and shells are easily transported downstream. Because dead shells may persist for several years and for some taxa it is difficult to distinguish recently dead versus fossilized shells, conclusions regarding recent habitation are purely speculative. Four of the surveys examined a larger geographical area than previous studies cited in the proposed rule and only in a few instances were additional new "live sites" found. The study by Beak (1987; referred to in Issue #3) reported a single live Snake River Physa below Minidoka dam at river mile 675 and two new live sites for the Idaho springsnail (within the historic range cited in the proposed rule). Frest (1991b) surveyed nearly 500 sites for candidate molluscs from 1988–91 throughout the Snake River and Columbia River basins, including 51 sites in the middle Snake River. Although Frest collected Bliss rapids snail, Idaho springsnail and Utah valvata snails, none of the collections were considered new live sites and none of the candidates were reported outside the middle Snake River drainage. Frest (1991d) reported evidence of recent range reduction for the candidate species based on failure to find live specimens during surveys by Beak (1987) at some of Taylor's earlier sites. Pentec (1991b) reported a new "live" population of Bliss rapids snail in the Snake River associated with spring outflows above American Falls reservoir at river mile 749.8. The report states that this ". . . collection of live animals (Bliss Rapids snails) increased the present range of the species upstream by 162 miles or by 486 percent relative to the present range stated in the USFWS proposal . . ." These types of range descriptions and comparisons are valid only when species distribution is 'continuous' and not fragmented or discontinuously distributed as is the situation for these species. In any event, new live sites reported for the Bliss Rapids snail are within the historic range cited in the proposed rule, and are subject to similar habitat threats as the previously cited sites. Pentec also reported the third "new" population of Banbury Springs lanx discovered in a large spring-run at the Preserve (river mile 584.6). More recently, a limited study on the effects of reservoir drawdown on molluscs in the lower Snake River below Hells Canyon reported the absence of the five candidate species in this reach (Frest and Johannes 1992b). The authors of this study also noted the absence of other expected mollusc endemics, even the eurytopic and widespread species, from exposed shorelines in deepwater habitats in impounded reaches. In summary, no new significant distributional information affecting the status of the five taxa were reported by any respondent. and in most instances the candidate species were not collected at most sites sampled in each survey. Moreover, with the exception of *Lanx*, the surveys substantiate conclusions in the proposed rule that the candidate species are found only in the Snake River and have declined to the point where they are now absent from vast reaches of the Snake River. Regarding the argument that the proposed listing is based on inadequate and biased sampling, the Service concurs with Falter's (1992) following summary and analysis:

"* * * non-randomized, purposeful sampling may well miss existing populations", therefore ". . . given suitable habitat, additional populations of these taxa might be found with more orderly, non-purposeful sampling. Statistical considerations alone do not fully answer that possibility. The sampling issue is but part of the question of whether one would expect to find additional populations of any one of these taxa. The suitability of the habitat to support the species must also be considered, *i.e.*, unacceptable habitat renders moot the question of whether non-sampling of river habitats judged to be ecologically unacceptable for a species indicates possibility of additional habitat where the taxa might be found. The stenotopic environmental requirements of all of these taxa first delimits possible habitat for a species. Secondly, one addresses the question of adequate sampling of the potential habitat, not of all the water environment in the river, irregardless [*sic*] of the degree of matching organism requirements with the environment. Ecological judgement sets the bounds; statistical judgement then considers adequacy of sampling that potential habitat. The panel had no deepwater sampling data to review but the findings of recent water quality studies of absolute environmental unsuitability offered by these habitats justifies the conclusion that Gastropods, especially taxa only found in habitats very different than those presently offered by the deepwater habitats are unlikely to be found . . ." Falter goes on to state ". . . The bulk of the remaining, poorly sampled Snake River does not now offer those habitat conditions" (needed by the taxa), ". . . so it is not potential habitat. Reasonable ecological inference correctly stratifies those latter areas out of consideration as potential habitat."

These considerations also rule out deepwater habitat by these taxa since water quality declines with depth in the middle Snake River. The Service does believe that future mollusc surveys and studies may reveal a few additional locations with live populations or colonies of the candidate species, especially in shallow, littoral areas influenced by springflows. However, it is likely that these newly discovered populations will be threatened by the same activities affecting the existing populations. The Service maintains that this final rule is based on the best information available. The Service also believes that sufficient information is provided on these five species to warrant making a determination on their status at this time.

Issue 5: Many comment letters expressed concerns with the potential economic impacts to agriculture and community development along the Snake River plain in south central Idaho from listing the five snails under the Act. For example, several commenters were concerned with the potential impacts to future hydroelectric development along the middle Snake River and constraints to existing project operations. Another respondent requested that the Service designate ". . . mitigation measures that would permit normal agricultural practices while still protecting the species . . .".

Service response: Under section 4(b)(1)(A) of the Act, listing determinations are based solely on the best scientific and commercial information available and economic considerations are not applicable. The legislative history of the provisions clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions." H.R. Rep. No. 97–835, 97th Congress 2nd Session 19 (1982). Because the Service is specifically precluded from considering economic impacts in the final rulemaking process, the Service has not addressed such impacts in this final rule.

Issue 6: One commenter was concerned with the impacts to agriculture from designating critical habitat. They requested the Service designate critical habitat during the final rulemaking process ". . . to avoid too large an area being designated."

Service response: Under section 4(a)(3)(A) of the Act, the Secretary must designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be threatened or endangered. In the proposed rule, the Service found that determination of critical habitat was not prudent for these species. As discussed under the "Critical Habitat" section below, the Service continues to find that designation of critical habitat for these aquatic snails is not prudent at this time. Because many of the remaining populations for these species are in localized springs, the Service believes such designation might increase the degree of collecting, vandalism, and other human activities, thus further threatening these five snails. Protection of these species' habitats will be addressed through the recovery process, and through the section 7 consultation process.

Issue 7: One respondent maintained that this issue should be decided by the State of Idaho and not through the Federal listing process. The Service should delay listing at this time "* * * because the legislature and Water Resources Board have extended protection to the Middle Snake for a number of years and there is no reason that this water quality and everything can't be taken care of on a state level."

Service response: In recent years, several programs to address deteriorating water quality in the Snake River have been initiated by various State of Idaho regulatory agencies with permitting and enforcement authority (IDHW 1991 a and b). One of the first of these programs was a water quality monitoring study launched in 1990 by the Division of Environmental Quality (DEQ). That same year the Snake River from Shoshone Falls downstream to Lower Salmon Falls Reservoir was listed as "water quality limited." This determination requires that DEQ develop a Total Maximum Daily Load (TMDL) for the river which quantifies pollutant sources and allocates nutrient loads. In a related matter, the DEQ recently denied certification for a National Pollution Discharge Elimination System (NPDES) permit for a new fish rearing facility in the middle Snake River area. The decision was based on DEQ's interim policy of no net increase in total nutrients discharged into the Snake River prior to development of the TMDL. Passage of the Nutrient Management Act passed by the Idaho Legislature in 1989 requires the DEQ to complete a nutrient management plan for the Snake River by 1993. The Idaho Department of Water Resources is involved in planning efforts which could result in State "protected" status for all or portions of this stretch of river. Such designation would protect "outstanding fish and wildlife, recreational, aesthetic, historical, cultural, natural or geological values * * * for the public benefit and enjoyment" from certain activities and could preclude further hydro development. At present, the stretch from below Milner Dam downstream to King Hill is under interim protected status through 1993. Despite these and other programs initiated to halt the deterioration of the middle Snake River, most are in the early stages, and it is unlikely these programs will reverse the trend any time soon. In any event, regulations that provide protection for invertebrate species equivalent to provisions of the Federal Endangered Species Act do not currently exist in Idaho. The Idaho Department of Fish and Game does maintain a list of wildlife classified as Threatened and Endangered and/or Protected Nongame species that prohibits take or possession. However this protection does not extend to any non-vertebrate species. See the discussion under Factor D in "Summary of Factors Affecting the Species" for a complete discussion on the inadequacy of existing regulatory mechanisms for the Idaho springsnail, Utah valvata snail, Snake River Physa, Banbury Springs lanx and Bliss rapids snail.

Issue 8: One commenter requested that the Service prepare as part of the final rule a Takings Implications Assessment under Executive Order 12630 to evaluate the risk and strategies for the avoidance of the taking of private property.

Service response: Concerning Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" (March 15, 1988), the Attorney General has issued guidelines on implementation of the Executive Order. Under the supplemental guidelines for the Department of the Interior, a "special situations" rule applies when an agency is expressly required to take an action, making a finding, or give consultation based solely upon specified criteria that leave the agency no discretion; such as the criteria outlined in the Endangered Species Act (Act) for the listing of species. The Attorney General's supplemental guidelines state that Taking Implication Assessments (TIA) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policymakers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. Provisions of the Act require the Service to list species based solely on the best scientific and commercial information indicating whether or not they are in danger of extinction. The Service may not consider economic impacts in making a listing decision. The listing process is also subject to strict timetables and failure to comply may subject the agency to legal action. The provisions of the supplemental guidelines relating to non-discretionary actions are applicable to the determination of threatened and endangered status for the five snail species that are subject of this final rule.

Issue 9: Two respondents claim that the Service has "overstated" the threats to the species from various activities. Specifically, assertions in the proposed

rule that describe adverse impacts to the subject species such as "The species are threatened by proposed large hydroelectric dam developments, current peak-loading operations of existing hydroelectric water projects, water pollution, reduction in oxygen concentration, and possibly competition from a recently introduced hydrobiid snail" are ". . . conclusory, giving no evidence or analysis or citation for support."

Service response: Despite the above claims, no new information was provided to contradict the Service's contention that the five species are threatened by deteriorating water quality and other threats present in the middle Snake River (see Factor A in "Summary of Factors Affecting the Species"). New information submitted during the comment period reaffirmed that the snails are coldwater stenotopic species restricted to the middle Snake River with localized distribution, and absent from impounded reaches. Most of this information was found in eight mollusc surveys undertaken from 1987–1992 at various locations throughout the Snake River Basin (Beak 1987, Beak 1989, Frest 1991b, Frest and Johannes 1991, Frest and Johannes 1992a, Frest and Johannes 1992b, Pentec 1991b, and Taylor 1987). Although range extensions were noted for Utah valvata and Bliss Rapids snails in some of the surveys, sites where these and the remaining three species were collected occurred only in 'preferred or usable' habitat types. In fact, snails were absent from most sites and locations sampled in each survey. Frest and Johannes (1992a) noted declines in abundance and distribution of Utah valvata in the Conservancy's Preserve, a "protected area", due to water quality problems attributed to agricultural and aquaculture return flows initiated outside the Preserve's boundaries. Taylor (1985a) stated that diversion of a portion of Box Canyon Creek to the Clear Springs Trout Hatchery in the fall of 1973 "substantially impacted populations of Bliss Rapids snails" downstream in the Bureau of Land Management's Box Canyon Area of Critical Environmental Concern. He also noted that the diversion possibly enhanced habitat for Utah valvata snails through flow velocity reduction. Since the stenotopic environmental requirements of these species defines suitable habitat, most malacologists agree that impounding remaining free-flowing reaches would be devastating to four of the five species. Impoundment would inundate existing habitat, reduce vital shallow shoreline habitats in tailwater areas due to operating flow fluctuations, elevate water temperatures, reduce dissolved oxygen levels in sediments, modify the rivers ability to assimulate point and non-point source pollution, and further fragment remaining populations. Frest and Johannes (1991) acknowledged that proposed construction of diversion dams for power production at Kanaka, Empire, and Boulder Rapids, river miles 592.2, 594.5, and 597.5, respectively, would not impact Utah valvata or any other candidate species because the taxa no longer occur in that river reach. The authors attributed the snails absence to deteriorating water quality and emphasized that this stretch of the river was becoming marginal mollusc habitat for the remaining native species. In addition, the recent low flows associated with the prolonged drought in southeast Idaho have contributed to continuing water quality problems throughout the Snake River basin. The Service, however, does believe that *Physa* and Bliss Rapids snail would benefit from stabilized, non-fluctuating water levels in the Lower Salmon Falls and Bliss Dam tailwater reaches. As discussed in detail in the "Summary of Factors Affecting the Species" section, the Service concludes that nearly all of the remaining populations of the five snails are at risk.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Idaho springsnail (*Pyrgulopsis idahoensis*), Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), and Banbury Springs lanx (*Lanx* n. sp.) should be classified as endangered species and the Bliss Rapids snail (Family Hydrobiidae, n. sp.) should be listed as a threatened species. Procedures required by section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. Under the Act, a species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Idaho springsnail, Utah valvata snail, Snake River Physa snail, Bliss Rapids snail, and the Banbury Springs lanx are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Activities that could further threaten the continued existence of the Bliss Rapids snail, Utah valvata snail, Idaho springsnail, Banbury Springs lanx, or Snake River Physa snail include proposed large hydroelectric dam developments, peak-loading operations of existing hydroelectric water projects, water pollution, diversion of water for irrigation and aquaculture and small hydroelectric development.

Six proposed hydroelectric projects, including two high dam facilities, would alter free flowing river reaches within the existing range of these snails. Dam construction threatens the five taxa through direct habitat modification and moderates the Snake River's ability to assimilate point and non-point pollution. Further hydroelectric development along the Snake River would inundate existing mollusc habitats through impoundment, reduce critical shallow, littoral shoreline habitats in tailwater areas due to operating water fluctuations, elevate water temperatures, reduce desolved oxygen levels in impounded sediments, and further fragment remaining mainstem populations or colonies of these snails.

The Idaho Power Company studied the feasibility of additional hydro development in the area during the early 1980's, and the Federal Energy Regulatory Commission (Commission) denied the Company's license requests when a mid-1980's power supply needs analysis revealed that the Northwest United States would have a power surplus into the early 1990's. However, the rapidly growing Northwest region is forecasting power shortages by the late 1990's and interest in developing potential hydro sites on the Snake River is on the rise.

Currently, Idaho Power Company has received a preliminary permit to evaluate the development and operation of the A.J. Wiley hydropower project (Federal Energy Regulatory Commission No. 11020) at river mile 565 on the lower Salmon Falls Dam tailwater. The reservoir created by this project would extend approximately six river miles to the tailwaters of the existing lower Salmon hydroproject and impound approximately 625 surface acres. This impoundment would inundate and destroy mainstem river habitats for existing populations of Snake River Physa and Bliss Rapids snail. Dike Hydroelectric Partners, (Federal Energy Regulatory Commission No. 10891) is currently evaluating another location, the Bliss Dam tailwaters at river mile 552, for hydropower development. This project would include construction of a large compacted concrete dam creating a 560-acre reservoir. This development would inundate existing habitat and populations of the Idaho springsnail, the Bliss Rapids snail, and the Snake River

Physa snail that occur near Bancroft Springs. Construction of these two proposed dams would inundate four mainstem sites that are currently supporting populations of the Bliss Rapid snail; both of the two known sites that are currently supporting populations of the Snake River Physa snail, and at least one known population of the Idaho springsnail. These two proposed dams would not inundate habitat for the Utah valvata snail since this snail is well upstream. The Banbury Springs lanx occurs in three tributary springs that flow into the Snake River and these would likely not be impacted by the two dams. The remaining four proposed hydro projects are diversion or run-of-river developments (without reservoirs) that would alter the flow regime and minimize annual flows in the bypass reaches at the four Snake River sites. Frest and Johannes (1991) believe that proposed construction and operation of three of these projects for power production, Kanaka, Empire and Boulder Rapids would not adversely impact the Utah valvata or any other candidate, so long as efforts to control sedimentation during construction are implemented. Deteriorating water quality is most likely the primary factor limiting the native molluscs in this reach. Even with improvements in water quality in this reach of the Snake River, construction of these projects would affect recovery efforts since otherwise suitable free-flowing habitats would be impacted.

Peak-loading, the practice of artificially raising and lowering river levels to meet short-term electrical needs by local run-of-the-river hydroelectric projects also threatens these species. Peak-loading is a frequent and sporadic practice that results in dewatering mollusc habitats in shallow, littoral shoreline areas. With the exception of the Banbury Springs lanx and possibly Snake River physa, these diurnal water fluctuations prevent the candidate species from occupying the most favorable habitats. The Bliss Dam is approximately six miles above Bancroft Springs and may adversely affect three known populations of the Idaho springsnail, two populations of the Bliss Rapids snail, and a population of the Snake River Physa snail, by restricting littoral habitat during the late summer peak-loading operation. Peak-loading operation of the lower Salmon Falls Power Plant may harm three mainstem Snake River populations of the Bliss Rapids snail, and a population of the Snake River Physa snail. The combined peak-loading effects from proposed A.J. Wiley and Dike hydroelectric projects would also impact known populations of the Idaho springsnail, most of the extant colonies of the Bliss Rapids snail, and both of the Snake River Physa snail populations in the Hagerman and King Hill reaches. The recently discovered population of Bliss Rapids snail above American Falls (river mile 749.8) is also subject to the effects of water fluctuations from operation of the Shelley hydroelectric project at river mile 783.

Based on limited sampling, these snails have not been found between Milner Dam (river mile 639.1) and Shoshone Falls (river mile 614.8). This reach of the Snake River is essentially dewatered during the irrigation season and remaining low flows have poor water quality. It is unlikely that these species could exist in this river stretch. During the irrigation season water quality and quantity below Shoshone Falls is poor, though both are gradually improved by inflow from Snake River Plain Spring tributaries through the Hagerman Reach.

The quality of water in these habitats has a direct effect on the species survival. The species require cold, well-oxygenated unpolluted water for survival. Any factor that leads to a deterioration in water quality would likely extirpate these taxa. For example, the Banbury Springs lanx lacks either lungs or gills and respires through unusually heavy vascularized mantles. This species cannot withstand temporary episodes of poor water quality conditions. Because of its stringent oxygen requirements, any factor that reduces dissolved oxygen contact for even a few days would very likely prove fatal to most or all of the populations. Factors that would degrade water quality include reduction in flow rate, warming, and increases in the concentration of fertilizers, herbicides or pesticides from irrigation waste water return. The middle Snake River is impacted by return flows from irrigated agriculture, runoff from feedlots and dairies, hatchery effluent, municipal sewage effluent, and other point and non-point discharges. During the irrigation season, 13 perennial streams and more than 50 agricultural drains contribute irrigation tailwater to the Snake River (IDHW, 1991b). In addition, more than 140 commercial, State and Federal fish culture facilities discharge wastewater into the Snake River and its tributaries. These factors, coupled with drought-induced low flows, contribute to the increased eutrophication and general decline of the coldwater lotic molluscs of the middle Snake River. Water quality in the alcove springs and tributary spring streams in the Hagerman Reach have also been somewhat impacted, though not as severely as the mainstem river has. The Hagerman Reach receives massive cold water recharge from the Snake River Plain Aquifer. Several of these springs and spring tributaries have been diverted for hatchery water supplies with return flows to the Snake River enriched with nutrients. At the Conservancy's Preserve at Thousand Springs, there is evidence that colonies of Utah valvata and Bliss Rapids snail have recently declined or been eliminated at several sites from changes in water quality due to agricultural and aquaculture wastewater originating outside the area (Frest and Johannes 1992a).

Four tributary springs or spring streams of the Hagerman area of the Snake River—Banbury Springs, Box Canyon Springs, Thousand Springs and Sand Springs Creek—contain populations of two or more of the taxa described in this rule. The Banbury Springs lanx is found in only three of these tributary springs: Banbury, Box Canyon and Thousand Springs. The Utah valvata and Bliss Rapids snail occur in Box Canyon, Thousand Springs and the mainstem Snake River. Banbury Springs has no known threats, but Box Canyon Springs is threatened by a small hydroelectric project at the upper end of Box Canyon and a water diversion dam at the lower end of Box Canyon. The upper two-thirds of Box Canyon, including the water diversion is privately owned. The stream and associated area below the diversion is owned by the Bureau of Land Management (BLM) and was designated an Area of Critical Environmental Concern (ACEC) in 1986. The ACEC was established to manage habitats for three candidate molluscs, the Bliss Rapids snail, Utah valvata, and *Fisherola nuttalli*, and the Shoshone sculpin (*Cottus greenei*). *Lanx* (Banbury Springs lanx) was added to the list of sensitive species under ACEC management with the discovery of the second of three populations of this species in the Sculpin Pool at Box Canyon in 1989 (Beak 1989). Construction of a diversion dam for a trout culture facility in upper Box Canyon in 1973 eliminated habitat of the Bliss Rapids snail, though Taylor (1985a) reported that sediment produced as a result of constructions enhanced habitat for Utah valvata downstream in the natural pool on BLM lands. Ground water mining or withdrawal may also impact spring stream habitats of the "new" Bliss Rapids snail population above

American Falls Reservoir at river mile 749.8. Biologists of the Shoshone Bannock Tribal Reservation have observed water fluctuations and seasonal declines in spring flows along this stretch of the Snake River concurrent with the irrigation season (Doug Takai, biologist, Shoshone Bannock Tribal Reservation, pers. comm.). Though not fully documented, these seasonal declines in spring flows seem more pronounced in recent years due to ongoing drought conditions.

Winter cattle grazing and recreational access may also be impacting spring habitats of the Bliss Rapids snail on the Shoshone Bannock Reservation. Although access is controlled, waterfowl hunters, and to some extent fishermen, utilize these spring areas throughout the Fall and early Winter. The Service believes trampling by cattle and people will likely produce minimal impacts to spring habitats.

In summary, the cumulative effects of these factors combined with extreme low flows throughout much of the Snake River from over five years of drought, continue to threaten the remaining habitats and increasingly fragmented populations of these five species. This is especially true for habitats and extant populations in the mainstem Snake River.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable. However, due to their rarity, some of these taxa may have been subject to past overutilization for scientific purposes. For example, of the less than fifty live Snake River Physa snails collected in the middle Snake River, nearly all were preserved or killed for scientific purposes. In other instances, some molluscs have become vulnerable to illegal collection for scientific purposes following listing under the Act.

C. *Disease or predation.* Changes in the fish fauna of the middle Snake River have been suggested as potentially threatening to some or all of the candidate taxa. However, no data to support this suggestion exists. Fish predation was not considered a "major problem" for these taxa in a recent mollusc survey at The Nature Conservancy's Preserve (Frest and Johannes 1992a).

D. *The inadequacy of existing regulatory mechanisms.* The Idaho Department of Water Resources regulates water development in the Snake River basin. At present, there is no specific allocation of water on the mainstem middle Snake River for fish and wildlife, although maintenance flows for fish and wildlife on several tributary streams to the Snake River have been established. Without Federal protection under the Act, present management regulations are inadequate to curb further water withdrawal from groundwater spring outflows or tributary spring streams.

Changes in the use of stored water in the Snake River basin to assist recovery efforts for other threatened and endangered species may also impact these species and their habitats. For example, the Bonneville Power Administration, State of Idaho, and Idaho Power Company are exploring alternatives to assist outmigrating endangered Snake River sockeye salmon (*Oncorhynchus nerka*) and threatened spring and summer chinook (*Oncorhynchus tshawystscha*) from utilizing water from the upper Snake River basin.

The Idaho Department of Health and Welfare, Division of Environmental Quality, under authority of the State Nutrient Management Act, is coordinating efforts to identify and implement preventative actions which will reduce nutrient loading to the middle Snake River below Milner Dam (IDHW 1991b). These efforts will address pollution control strategies for this stretch of river through several of the following program areas: State Agricultural Water Quality Program, NPDES permits, 401 Certification, Bureau of Land Management land management plans, the State Water Plan and local ordinances. Despite these efforts to better comprehend and halt the deterioration of the middle Snake River, it is unlikely these programs will reverse the trend any time soon, since it will be several years before any recommendations to improve water quality outlined in comprehensive resource management plans for the Snake River are fully implemented.

There are at least two State agencies that have as part of their goals and objectives the identification and protection of rare taxa and their habitats. The Idaho Parks and Recreation has authority under *Idaho Code* section 18–3913, 1967, to protect only plants, with animals not given special protection on Idaho lands. The Department of Fish and Game, under *Idaho Code* section 36–103, is mandated to preserve, protect, perpetuate, and manage all wildlife. However, these mandates do not extend protection to invertebrate species.

The Federal Energy Regulatory Commission (Commission) is the agency responsible for issuing licenses for hydroelectric projects. The Commission solicits input from the Service regarding environmental impacts that may result from proposed projects. The Service's comments regarding impacts to "candidate" only species, such as the five aquatic snails, are advisory in nature. The Commission relies upon the developer and the Service to resolve issues with respect to candidate species. Without listing, it is unlikely that the Commission would require a project proponent to mitigate for impacts to these species unless the developer did so voluntarily. Consequently, the Commission's review of projects does not provide protection to the five taxa covered in this rule.

The U.S. Army Corps of Engineers (Corps) is also involved in the permitting of projects on the Snake River through their authority under section 404 of the Clean Water Act. The Corps issues individual and nationwide permits for projects that would result in the fill of waters of the United States. Nationwide permits are often issued for relatively small projects (hydroelectric projects producing less than 5 megawatts and some bridge crossings) that presumably have minimal environmental impacts. Projects requiring individual permits undergo more extensive environmental review and the permits often include conditions that require avoidance or mitigation for environmental impacts. Virtually any project within the range of these molluscs would require an individual permit as described in section 404 of the Clean Water Act. The Corps does solicit input from the Service regarding impacts to wildlife resources. The Corps gives full consideration to the Service's comments on permits. However, the Service's comments regarding candidate species are advisory. In practice, the Corps does not give any special consideration to the five invertebrates considered herein.

With the listing of these species as threatened or endangered, the Corps and the Commission will be required to initiate formal consultation pursuant to section 7 of the Act on any project that may affect one or more of these species. Such consultation would result in a Biological Opinion on whether or not the project proposed to be authorized is likely to jeopardize the continued existence of the species. With listing, both the Commission and Corps will be required to insure that any project they authorize will not be likely to jeopardize the continued existence of these species. Conditions that would provide protection to the species could be incorporated into permits or licenses issued. The provisions of section 7 of the Act are more fully discussed later in this proposed rule.

E. *Other natural or manmade factors affecting their continued existence.*

Although not fully understood, an introduced hydrobiid snail, the New Zealand mudsnail (*Potomapyrgus antipodarum* (=*P. jenkinsi*)) may complicate survival for these native species. This non-native species occurs throughout the range of the five species included in this rule (Bowler 1989a, 1989b, 1990). This hydrobiid snail is native to New Zealand and has also spread to Europe and Australia. *Potamopyrgus antipodarum* was first reported in the middle Snake River in 1987, when Taylor found the species had invaded several alcove spring habitats at The Nature Conservancy's Preserve. This exotic taxa may have been inadvertently introduced by the private aquaculture industry in this area. By December, 1988, *P. antipodarum* was the dominant taxa in the free-flowing habitats of the Hagerman Reach below Bliss Dam (Bowler 1990). It formed dark mats of individuals in habitat formerly preferred by native species including the Bliss Rapids snails and Snake River Physa. The species has been observed at densities of nearly 400 individuals per square inch. *Potamopyrgus* is parthenogenic and ovoviparous, which contributes to the ability to build large populations rapidly and recover from population crashes. The species is eurytopic and shows very little preference for substrate type or size. The mudsnail is much more abundant in the mainstem Snake River than in cold spring environments; it is uncommon or absent in both unimpacted, pristine or stagnent, highly polluted environments (Frest and Johannes 1992a). At present, *Potamopyrgus* is not abundant in large springs inhabited by *Lanx n. sp.* and in cold springflows with colonies of Bliss Rapids snail and Utah valvata. The species does, however, compete for habitat with Snake River Physa and Idaho springsnail and mainstem colonies of Bliss Rapids snail and Utah valvata. *Potamopyrgus* is abundant in the Snake River below Bliss Dam to C.J. Strike Reservoir and inhabits the same littoral sand/silt substrate as the Idaho springsnail (Bowler 1990). In addition, the species forms "thick mats" of individuals at mainstem locations with Snake River Physa and Bliss Rapids snails. Potential threats to the subject species and other native molluscs include crowding and competition for preferred habitat for mainstem populations, and possible attraction and support of molluscivorous fish and avian predators (Bowler 1990). Although no information exists regarding foraging, it is possible that competition for forage may occur in areas where preferred habitats are limiting *i.e.*, boulder substrate is limited. In summary, *Potamopyrgus* appears to impact most directly mainstem populations of the candidate taxa. At present, it does not appear to threaten spring populations of *Lanx n. sp.*, Bliss Rapids snail and Utah valvata. The New Zealand mudsnail is still expanding its range and population in the Snake River. Further research on *Potamopyrgus* is required to monitor its expansion and to fully comprehend its full impact to the native molluscs and the overall ecology of the Snake River.

Determination

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to issue this rule. Based on this evaluation, the preferred action is to list the Idaho springsnail (*Pyrgulopsis idahoensis*), Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), and the Banbury Springs lanx (*Lanx* n. sp.) as endangered and the Bliss Rapids snail as threatened. With the exception of *Lanx*, four of the taxa have declined over all but a small fraction of their historical range. Today these species generally persist in a few isolated free-flowing reaches or spring alcove habitats in the middle Snake River characterized by cold well-oxygenated unpolluted water. *Lanx* has remained relatively stable within its three known locations since its discovery in 1988. However, because *Lanx* is known only from three locations it is most vulnerable to habitat change. The free-flowing, cool water environments required by these species have been impacted by and are vulnerable to continued adverse habitat modification and deteriorating water quality. This is especially true for those species restricted to mainstem river environments, the Snake River Physa and Idaho springsnail, but also mainstem colonies of Bliss Rapid snails and Utah valvata. These mainstem species may also be vulnerable to habitat competition from an exotic snail. With the exception of spring habitats at The Nature Conservancy's Preserve, remaining pristine spring and spring stream complexes preferred by *Lanx*, Bliss Rapids snail and Utah valvata are not protected from all threats previously discussed. Existing regulations do not provide adequate protection to prevent further direct and indirect habitat losses. Because the Idaho springsnail, Utah valvata, Snake River Physa, and Banbury Springs lanx are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

The Bliss Rapids snail is the most widespread of the five taxa, with new live populations recently reported above American Falls reservoir in springflow habitats. It is most abundant in several cold springs in the Hagerman Reach, and enjoys some degree of protection in several unpolluted springs on The Nature Conservancy's Preserve at Thousand Springs. The number of extant populations, including those on the Preserve, provides greater flexibility in recovery and reduces the likelihood that the Bliss Rapids snail will go extinct in the immediate future. However, remaining mainstem populations are variously threatened. Because of the limited threats facing the Preserve colonies of Bliss Rapids snails and the likelihood that limited additional populations may be found in spring habitats, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, the Bliss Rapids snail is likely to become in danger of extinction in the near future. As a result, the Bliss Rapids snail fits the definition of threatened species as defined in the Act.

For reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service has determined that critical habitat designation for these species is not presently prudent. Some populations are in localized springs and over-collecting by malacologists or vandalism could occur if their whereabouts were widely known. Regulations implementing section 4 of the Act provide that a designation of critical habitat is not prudent when a species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat (50 CFR 424.12). Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in the areas where these snails persist can be identified without the designation of critical habitat. Therefore, it would not now be prudent to determine critical habitat for these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protections required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a threatened or endangered species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may be affected by this final rule include the granting of licenses by the Commission for hydroelectric/power dam development and the issuing of permits under section 404 of the Clean Water Act by the Corps. The Commission will likely be required to consult with the Service on the previously mentioned hydroelectric/power dam proposals (A.J. Wiley, Idaho Power Company and Dike Hydroelectric Company). The Corps and Bureau of Land Management will likely be required to consult with the Service on the Box Canyon water diversion dam. In addition, joint consultation by the Corps and the Commission with the Service may be necessary if any of the projects under licensing consideration by the Commission include plans for filling. Federal or federally assisted programs affecting potential Snake River Plain Aquifer recharge programs and the Environmental Protection Agency's NPDES program would also be subject to consultation under section 7(a)(2).

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife, and to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered species, or any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing endangered species permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Regulations governing permits for threatened species are at 50 CFR 17.32. Unless otherwise provided by a special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Stephen D. Duke, Boise Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation(s) Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Snails to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
• • • •		•	•		•		
Snails							
• • • •		•	•		•		
Limpet, Banbury Springs	*Lanx* n. sp.	U.S.A. (ID)	NA	E	485	NA	NA
• • • •		•	•		•		
Snail, Bliss Rapids	Family Hydrobiidae n. sp.	U.S.A. (ID)	NA	T	485	NA	NA
• • • •		•	•		•		
Snail, Snake River Physa	*Physa natricina*	U.S.A. (ID)	NA	E	485	NA	NA
• • • •		•	•		•		
Snail, Utah valvata	*Valvata utahensis*	U.S.A. (ID)	NA	E	485	NA	NA
• • • •		•	•		•		
Springsnail, Idaho	*Pyrgulopsis idahoensis*	U.S.A. (ID)	NA	E	485	NA	NA
• • • •		•	•		•		

Dated: November 25, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–30174 Filed 12–11–92; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Monday
December 14, 1992

Part IV

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1303
Head Start Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1303

RIN 0970–AB00

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to revise and clarify for Head Start grantees and delegate agencies the requirements concerning appeals by grantees from termination and denial of refunding actions. This final rule also includes provisions on appeals by current or prospective delegate agencies of grantees' rejections of, or failures to act on, applications, or grantees' terminations of grants or contracts.

The new procedures will reduce reporting and paperwork requirements. The changes also remove unnecessary and duplicative provisions and revise the language of the current regulation for clarity.

The most significant change is an improvement to the show cause and hearings process for Head Start grantees by abolishing the current complex and costly procedures and utilizing instead the Departmental Appeals Board.

DATES: This rule is effective January 13, 1993, with the exception of sections 1303.10 through 1303.23 which will become effective upon assignment of an OMB approval number.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 205–8347.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (the Act), section 635 of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9831 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. In FY 1991, Head Start served 583,471 children through a network of 1,346 grantees and 575 delegate agencies which have approved written agreements with grantees to operate Head Start programs.

II. Purpose of the Rule

The Administration for Children and Families (ACF) is amending the current rule governing Head Start grantee and delegate agency appeals at 45 CFR part 1303. The purpose of this revision is to eliminate duplication and increase efficiency in governmental operations by reducing the time expended in preparing and holding an appeal, and conducting a hearing and reaching a final decision. We believe this revision will reduce the cost of an appeal and the total time required for an appeal from the initial request for a review or a hearing on the proposed action to a final decision.

III. Summary of the Major Provisions of the Rule

The new regulations significantly revises, clarifies, and simplifies the appeals process for Head Start grantees and current and prospective delegate agencies. The changes are in response to a review and analysis of data on actual appeals filed by Head Start grantees and delegate agencies.

The following is a summary of the major provisions of the final rule:

(1) Currently, grantees may appeal three types of actions by the Administration for Children and Families (ACF): A termination of financial assistance; a denial of refunding, including certain reductions in funding; and a suspension. This rule requires that all allowable grantee appeals will be heard by the Departmental Appeals Board rather than by ACF staff.

(2) The rule continues to permit current and prospective delegate agencies to appeal to the grantee agency the rejection of an application and the failure of a grantee to act on an application within a timely period. In addition, the rule permits delegate agencies, for the first time, to appeal the termination of a grant or contract.

(3) The rule raises attorney fees from $100.00 per day to the usual and customary fees for the locality in which the grantee or delegate agency is located, but no higher than $500.00 per day. This figure will be adjusted to reflect annual increase in the Consumer Price Index.

(4) If a current or prospective delegate agency is dissatisfied with the grantee's decision, it may appeal that decision to ACF. The rule applies the "arbitrary and capricious" standard of review for appeals to ACF by current or prospective delegate agencies.

(5) Finally, the rule allows the ACF reviewing official to direct a remedy where a specific resolution of the dispute is appropriate.

IV. Rulemaking History

On January 29, 1992, the Department published a Notice of Proposed Rulemaking in the **Federal Register** (57 FR 3394), proposing to amend 45 CFR part 1303. Interested persons were given 60 days in which to comment on the proposed rule. During the 60 day comment period the Department received 11 letters containing 38 comments pertaining to one or more sections of the proposed regulation. There were two general comments, 13 comments on Subpart A, 17 comments on Subpart B, and six comments on Subpart C.

Section-by-Section Discussion of the NPRM

Two of the comments received were general expressions of support for the proposed changes.

Subpart A

Section 1303.1

Purpose and Application. No comments were received on this section.

Section 1303.2

Definitions. No comments were received on this section.

Section 1303.3

Right to an attorney, attorney fees, and travel costs. We received nine comments on paragraph 1303.3(a)(1), which concerns the right to an attorney and attorney fees. Six of these comments were addressed to the NPRM provision which allows attorney fees to be charged to the program grant in an amount equal to the usual and customary fees charged in the locality, up to $250 per day. Most commenters approved the increase in allowable attorney fees from $100 per day in the current regulation and the provision for automatic increases for inflation in the maximum allowable fee. Several commenters opposed the maximum as too low, stating that $250 per day is less than the usual rate for an attorney's services, and that, because of the limitation, it would be difficult for Head Start grantees to find attorneys.

While we appreciate that a maximum allowance of $250 per day may not meet the prevailing market rate for attorney fees in all places, we have kept this rate in the final rule. We have several reasons for doing so. The increase to $250 more than doubles the current maximum. The maximum fee will now be indexed for inflation and so will not remain static, as it has in the past. Finally, we have no convincing evidence that a maximum allowance of $250 per day will seriously disadvantage grantees. The community support that Head Start enjoys should provide any assistance grantees might need to secure effective representation.

In addition, we have clarified this paragraph by changing the reference to "adjusted for inflation" to "adjusted annually to reflect the percentage change in the Consumer Price Index for all Urban Consumers".

We received one comment in support of the provision in the regulation that attorney fees may be charged to the program grant. Two commenters opposed the restriction in paragraph 1303.3(a)(1) that the fees of only one attorney may be charged to the program grant with respect to a particular dispute. We have not changed this provision, which we believe is a legitimate and necessary way to avoid excessive costs being charged to the program. We do not believe that the bringing of appeals by grantees will be unduly hampered as a result of this restriction.

In the NPRM we solicited comments on the advisability of allowing payment of attorney fees (and attorney's travel and per diem costs) only in cases in which the grantee is successful in the final outcome of its appeal. Three comments were received in response to this request, all of them in opposition to the idea. We propose no change to our current policy.

Section 1303.4

Remedies. No comments were received on this section.

Section 1303.5

Service of process. No comments were received on this section.

Section 1303.6

Successor agencies and officials. No comments were received on this section.

Section 1303.7

Effect of failure to file or serve documents in a timely manner. One comment was received on this section, to the effect that the requirements of the NPRM are too restrictive. We have not changed this section, which, while requiring strict adherence to filing deadlines, is made more flexible by the waiver provisions of section 1303.8.

Section 1303.8

Waiver of requirements. No comments were received on this section. However, we deleted the last sentence of paragraph (b), which states that the requirements of the paragraph may not be waived, and added a new paragraph (g), which prohibits waiver of any of the requirements of section 1303.8. This is more consistent with our intent that waivers be granted only in accordance with the requirements of this section. In addition, we made technical edits to paragraph (e).

Supbart B

Section 1303.10

Purpose. No comments were received on this section.

Section 1303.11

Suspension on notice and opportunity to show cause. We received four comments on this section. One commenter opposed the provision in section 1303.11(f) which states that any delegate agency that wishes to participate in an informal meeting regarding an intended suspension of the grantee may request permission to do so from the responsible Department of Health and Human Services' (HHS) official. We have not changed this provision, which states that the HHS official, in acting on any such request from a delegate agency, must take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency appear to be adequately represented by other participants. Two commenters objected to section 1303.11(j), which states that an interim grantee may be named during a non-summary suspension. (One of these commenters objected to the interim grantee provisions of sections 1303.13 and 1303.14 as well.) We have not changed the interim grantee provision of this section, which is necessary to insure that services to children and families continue during the suspension of the grant. Another commenter noted that section 1303.11(g) does not make clear when the responsible official has to make a decision if no informal meeting is held. We have corrected this omission by adding, at the end of the second sentence, the words "or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties."

Section 1303.12

Summary suspension and opportunity to show cause. One commenter objected to section 1303.12(1), which states that the responsible HHS official may appoint an agency to serve as interim grantee for a grantee which has been summarily suspended. This same commenter, and a different commenter, objected to the interim grantee provision of section 1303.13(e). We have not changed the interim grantee provisions of these sections, which, like that in section 1303, is necessary to insure that services to children and families continue during the suspension of the grant.

Section 1303.13

Appeal by a grantee of a suspension continuing for more than 30 days. Two comments were received opposing the interim grantee provision of section 1303.13(e). As noted above in the discussion of section 1303.12, we have not changed this provision. One commenter to sections 1303.13(f), 1303.14(c)(2), and 1303.15(d)(3) stated that, in order to speed up the appeals process, the notice of adverse action should specify that any appeal should be sent directly to the Departmental Appeals Board (DAB) and that the appellant must send a copy of the appeal to the responsible HHS official and the Commissioner, ACYF. We concur with this suggestion and have changed the final rule accordingly. A comment was received which noted that, unlike section 1303.21(a), neither section 1303.13, 1303.14 nor section 1303.15 contains any instructions about the contents of an appeal. We agree that sections 1303.13, 1303.14 and 1303.15 would be more clear and complete with instructions on the contents of an appeal. Instructions have been added to paragraphs 1303.13(f), 1303.14(c)(2) and 1303.15(d)(3).

Section 1303.14

Appeal by a grantee from a Termination of Financial Assistance. One commenter found section 1303.14 confusing in that it refers both to a right to an appeal and a right to a hearing, but only specifies that requests for hearings be transmitted to the DAB. This commenter suggests that, as in section 1303.15, this section use the word "appeal" throughout. We have changed this section by replacing the words "responsible HHS official" in paragraph 1303.14(c)(2) with the words "Departmental Appeals Board," and by deleting paragraph 1303.14(d).

(Paragraphs (e) through (k) of the NPRM have been redesignated accordingly.) This change both addresses the commenter's concern and eliminates the need for the transmission of the grantee's appeal request from the responsible HHS official to the Commissioner, ACYF, and from the Commissioner, ACYF, to the Departmental Appeals Board. In paragraph 1303.14(c)(5), we deleted the phrase "* * * the matter has been set down for hearing at a stated time and place or that * * *", which was inadvertently included in the NPRM. Only the Departmental Appeals Board should set the date and time for any hearing. This change is in accord with 45 CFR 1303.16(g).

We received one comment on this section objecting to the absence of a statement in the NPRM as to which party in an appeal under this section and section 1303.15 (dealing with appeals from denials of refunding) has the burden of proof. The current regulation provides that "ACYF will have the burden of justifying the proposed termination action." We have removed this sentence from the final rule because appeals will be heard by the Departmental Appeals Board. A comment was received on paragraph 1303.14(j) stating that it is highly undesirable to allow the responsible HHS official to set the deadline for the filing of a brief by an appellant who has waived its right to a hearing, since the official is a party in interest. It was suggested that the DAB set the deadline. We agree with this comment and have changed the final rule accordingly.

Finally, one commenter opposed the interim grantee provision of paragraph 1303.14(e)(1), stating that the naming of an interim grantee, except in cases of alleged criminal activity or apparent danger to children or staff, constitutes an assumption that the appeal will not be decided in the grantee's favor. In response to this comment, we have modified the interim grantee provision of this section to make clear what happens when a grantee appeals an administrative decision to court. We have added paragraph 1303.14(d)(3), which provides that if a grantee does not appeal the administrative decision to court within 30 days of its receipt of it, a replacement grantee will be immediately sought, and an interim grantee named, if needed, pending that selection. This modification reflects the fact that a replacement grantee may not be sought when a grantee appeals an administrative decision to court. However, we have specified at paragraph (d)(4) that an interim grantee may be sought even though the grantee has appealed within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm, and Federal funds from misuse or dissipation, or both. An interim grantee might be needed to keep the program viable in the community until the permanent successor is selected. We believe that 30 days is adequate for a grantee to decide to appeal since the matter would already have been considered in administrative proceedings and a record developed. Further, we do not believe that the process of selecting a permanent grantee should be delayed unreasonably. ACYF believes that it is important for the program's children and their families that stability be provided to the program as soon as possible, consistent with fairness to grantees. We believe the new regulation accomplishes that goal. Paragraph (d)(2) with regard to suspension of funding has been modified to clarify that an interim grantee will be appointed during the appeal period.

We have made some changes to paragraph 1303.14(i) to clarify the regulation. Grantee appeals of termination actions are to the Department Appeals Board. Therefore, all of their submissions must be to the Board, with copies as required by Board procedures. The Board, consistent with its current practices, will decide the appeal based on the written information and argument submitted to it. What is properly submitted will be determined by the Board, except as may otherwise be required by these regulations.

Section 1303.15

Appeal by a grantee from a denial of refunding. We received one comment in opposition to the last sentence of paragraph 1303.15(c), which permits refunding to be denied if it is concluded that continuing a particular program is no longer in the public interest. We have deleted this provision, since the grounds upon which the Department may seek to deny refunding are sufficiently broad to meet the Department's concerns.

Section 1303.16

Conduct of hearing. One commenter stated that paragraph 1303.16(b) should be deleted because DAB regulations already have a rule against communications outside the record. Since the DAB's usual procedure is for the presiding officer to set up the hearing, it was suggested that paragraph 1303.16(b) be changed to provide that the notice of hearing and issues be filed by (instead of with) the presiding officer. The same commenter stated that it is inappropriate to provide for the assistance of an attorney from the Department's General Counsel's office since the Board has its own staff attorneys. We concur with these comments and have made the following changes to paragraph 1303.16(b). The first sentence has been changed and now refers only to the prohibition on communications outside the record as provided by 45 CFR 16.17. The second sentence of paragraph 1303.16(b) has been deleted. One comment was received on paragraph 1303.16(e), which allows any person or organization that wishes to participate in a proceeding to apply for permission to do so from the presiding officer. The commenter stated that the provision is too broadly worded. We do not agree, and, therefore, have not changed this paragraph, which requires the person or organization which wishes to participate to state their interest in the proceeding, the evidence or arguments they intend to contribute, and the necessity for the introduction of such evidence or arguments.

Subpart C

Section 1303.20

Appeals to grantees by current or prospective delegate agencies on rejection of an application, failure to act on an application, or termination of a grant or contract. We received three comments on this section. One of the comments was on the right of a delegate agency to appeal a grantee's decision to terminate an agreement with it. This commenter strongly opposed this new right, saying that when relations between a grantee and delegate have worsened to the point where the grantee is moving to terminate the agreement between the parties, the only possible solution is intervention by the appropriate HHS official. While we are cognizant of the fact that grantee-delegate agency relations in cases in which the grantee is moving to terminate the contract which binds them may be quite strained, we think this step is very important for two reasons. First, the delegate's appeal to the grantee will create a record which the HHS official will have to review if that official is called upon to make a decision in the matter. Second, a thorough review of the situation by the parties will result in the resolution of more grantee-delegate agency disputes before they reach the HHS official. Two comments were received on the provision of this section which allows a delegate agency to have a responsible

HHS official review a grantee's rejection or failure to act on an application, or termination of a grant or contract. One commenter supported this provision, while the second opposed it, apparently on the ground that "review" by the official is not the same as an appeal. We have not changed the provision, and note that the "review" by an HHS official referred to in the NPRM's discussion of this section is in fact an appeal to the official (see paragraphs 1303.20(d) and 1303.21).

Section 1303.21

Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application. Two comments were received in opposition to the right of prospective delegate agencies, under paragraph 1303.21(a), to appeal from a grantee's denial of, or failure to act on, an application. The right of prospective delegate agencies to bring such appeals is found in section 646 of the Head Start Act (42 U.S.C. 9841). We have not made any changes to this section, which we believe simplifies and makes consistent the current regulatory provisions. One comment was received on paragraph 1303.21(e)(1), which states that a responsible HHS official may meet informally with a current or prospective delegate agency if the official determines that such a meeting would be beneficial to the resolution of the appeal. The commenter believes that no meeting should be held with the delegate agency without the grantee present, and that the provision that the meetings can be conducted by conference call should be deleted. Paragraph 1303.21(e)(2) states that "Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal." We do not believe the comment is well founded and have therefore left this paragraph as it was in the NPRM.

Section 1303.22

Decision on appeal in favor of grantee. No comments were received on this section.

Section 1303.23

Decision on appeal in favor of current or prospective delegate agency. No comments were received on this section.

Redesignation and Consolidation Table

Current section	New section
1303.1	No redesignation.
1303.2	No redesignation.
1303.3	No redesignation.
1303.4	No redesignation.
None	1303.5
None	1303.6
None	1303.7
None	1303.8
1303.10	1303.20
1303.11 and 1303.14	1303.21
1303.12	1303.22
1303.13 and 1303.15–19	1303.23
1303.20	1303.15
1303.21	1303.15
1303.22	1303.15
1303.23	1303.15
1303.24	1303.15
1303.25	1303.15
1303.26	None.
1303.30	1303.10
1303.31	1303.11
1303.32	1303.12
None	1303.13
1303.33	1303.14
1303.34	None.
1303.35	1303.16
1303.36	None.
1303.37	None.

V. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that this rule is not a major rule within the Executive Order because it will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, it will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This rule revises and clarifies the existing regulatory provisions regarding Head Start grantee and delegate agency appeals. It eliminates duplication and increases efficiency in governmental operations by reducing the time necessary to prepare an appeal, conduct a hearing, and reach a final decision. The final rule also revises, clarifies and simplifies the appeals process for Head Start grantees and current and prospective delegate agencies. The final rule requires that all allowable grantee appeals will be heard by the Departmental Appeals Board; permits a delegate agency to appeal the termination of a grant or contract; and allows the ACF reviewing official to direct a remedy where a specific resolution of the dispute is appropriate.

Our estimate of resource needs indicates that, while this final rule would affect some grantees and delegates who exercise their right to an appeal, it will not have a significant impact on the economy or result in a major increase in costs or prices for a substantial number of entities. We based this estimate on previous Head Start grantee and delegate agency appeals and the additional resources in some instances needed to implement the requirements. However, we estimate that this revision of the appeals process will be a direct benefit to the Government, grantees and the public since appeals procedures are simplified and one level of review is eliminated, thereby reducing some costs and speeding up the entire process. Thus, the Department concluded that this rule is not a major rule within the meaning of the Executive Order because it does not meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) we have tried to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The public burden is estimated to be 45 hours of work load per response. This is a reduction in the paperwork burden placed on grantees because there will be less duplication of documents given the reduction in appeal levels. For each rule with a "significant economic impact on a substantial number of small entities" we must analyze the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While this final rule would affect small entities, it will not have a significant economic impact on a substantial number of small entities. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record keeping requirement in a proposed and final rule. This final rule contains information collection requirements in § 1303.10 through § 1303.23 which will be submitted to OMB for review and approval in accordance with § 3504(h). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose, whose name appears in

this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 3002), Washington, DC 20503, Attention: Desk Officer for HHS/ACF.

List of Subjects in 45 CFR Part 1303

Administrative practice and procedures, Appeal procedures for Head Start grantees and current or prospective delegate agencies, Education of disadvantaged, Grant programs-social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: July 1, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: August 18, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the Preamble, chapter XIII, subchapter B, part 1303, of title 45 of the Code of Federal Regulations is revised to read as follows:

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

Subpart A—General

Sec.

1303.1 Purpose and application.
1303.2 Definitions.
1303.3 Right to attorney, attorney fees, and travel costs.
1303.4 Remedies.
1303.5 Service of process.
1303.6 Successor agencies and officials.
1303.7 Effect of failure to file or serve documents in a timely manner.
1303.8 Waiver of requirements.

Subpart B—Appeals by Grantees

1303.10 Purpose.
1303.11 Suspension on notice and opportunity to show cause.
1303.12 Summary suspension and opportunity to show cause.
1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.
1303.14 Appeal by a grantee from a termination of financial assistance.
1303.15 Appeal by a grantee from a denial of refunding.
1303.16 Conduct of hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application, or termination of a grant or contract.
1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.
1303.22 Decision on appeal in favor of grantee.
1303.23 Decision on appeal in favor of the current or prospective delegate agency.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

§ 1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, *et seq.*

ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with § 1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant;

(4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and

continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

§ 1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed $250.00 per day, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

§ 1303.4 Remedies.

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

§ 1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

§ 1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

§ 1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with § 1303.8 of this part.

§ 1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) "Good cause" consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may "good cause" consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official or the Departmental Appeals Board shall have the right, on own motion or on motion of a party, to require such documentation as deemed necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee's decision or the grantee's failure to act on an application.

(g) The requirements of this section may not be waived.

Subpart B—Appeals by Grantees

§ 1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by § 1303.5 or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may at his or her discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, the official will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting, or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, the official may suspend financial assistance in whole or in part and under such terms and conditions as he or she specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in § 1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with § 1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will be not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted.

(k) The responsible HHS official may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his or her own initiative or upon a satisfactory showing that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance in whole or in part without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to property or loss of project funds; or

(2) Violation of a Federal, State, or local criminal statute; or

(3) If staff or participants' health and safety are at risk.

(b) The notice of summary suspension will be given to the grantee as required by § 1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) The notice must include the following items:

(1) The effective date of the suspension;

(2) The grounds for the suspension;

(3) The extent of the terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five workdays after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five workdays after the grantee's request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two workdays of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with § 1303.14 or § 1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of § 1303.13 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the circumstances described in paragraph (f)(4) or (h)(1) of this section exist.

(h)(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and funding shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings.

§ 1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in paragraph § 1303.12(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subparts B and C of 45 CFR part 1302.

(f) Any appeal to the Departmental Appeals Board must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, or unclaimed. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside the scope of the program.

Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termination action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

(1) The grantee is no longer financially viable;

(2) The grantee has lost the requisite legal status or permits;

(3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;

(4) The grantee has failed to meet the performance standards for operation of Head Start programs that are applicable to grantees;

(5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;

(6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;

(7) The grantee has failed to comply with the requirements of the Head Start Act;

(8) The grantee is debarred from receiving Federal grants or contracts;

(9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

(1) The violations or actions justifying the termination.

(2) The fact that the termination may be appealed within 10 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841. Such an appeal must be in writing and must fully set forth the grounds for the appeal and be accompanied by all of the documentation that the grantee believes is relevant and supportive of its position.

(3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

(4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.

(5) Information that the grantee has a right to request a hearing in writing within a period of time specified in the notice which is not later than 10 days from the date of sending the notice.

(d) (1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.

(3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.

(4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.

(e) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the same time the grantee's request is made of ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(f) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.

(g) If the responsible HHS official has initiated termination proceedings

because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(h) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

(i) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of written information and argument submitted by the parties to the Departmental Appeals Board.

(j) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within ten work days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part.

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with § 1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) A statement that indicates the grounds which justify the proposed denial of refunding;

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) A statement that, if the grantee wishes to appeal the denial of refunding of financial assistance, it must appeal directly to the Departmental Appeals Board, and send a copy of the appeal to the responsible HHS official and the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations.

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

§ 1303.16 Conduct of hearing.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination, denial of refunding or suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity and ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

§ 1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to

applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 day period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

§ 1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under § 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of this position, including all written material or documentation submitted to the grantee under the procedures set forth in § 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties requests an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request or the expiration of the time for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance; and

(4) Any other evidence deemed relevant by the responsible HHS official.

§ 1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten workdays after the informal meeting. The decision, including a statement of the reasons therefor, will be in writing, and will be served on the parties within five workdays from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five workdays of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

§ 1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of an agreement to the grantee for prompt reconsideration and decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 workdays after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five workdays of its receipt of that decision. Any such appeal must comply with the requirements of § 1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of the fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

[FR Doc. 92–29940 Filed 12–11–92; 8:45 am]

BILLING CODE 4130–01–M

federal register

Monday
December 14, 1992

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 48

Federal Acquisition Regulation (FAR): Value Engineering Costs Allowability; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

RIN 9000–AD71

[FAR Case 89–88]

Federal Acquisition Regulation; Allowability of Value Engineering Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to republish the proposal to revise paragraph (b)(1) of FAR 48.101, General, to provide that under the incentive approach, the contractor develops and submits value engineering change proposals (VECP's) and shares in the savings of any that are accepted. The contract provides for payment of implementation costs if a VECP is accepted. The development costs for accepted and unaccepted VECP's shall be accumulated by VE project and charged indirectly if otherwise allowable in accordance with part 31.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 12, 1993, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR case 89–88 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 89–88.

SUPPLEMENTARY INFORMATION:

A. Background

This DARC-initiated revision was published as a proposed rule with a request for comments at 55 FR part 417, January 4, 1990. Thirty-three responses were received consisting of concurrences and no comments and 15 comments. Because of the complexity of the issues and questions that surfaced during the evaluation of the comments, revisions to the coverage were considered necessary. Since these changes may affect the public, it is considered necessary to republish the coverage as a proposed rule.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it is understood that most contractors already accumulate costs by value engineering project because they need this cost information to compute the projected savings and sharing arrangement on the VECP's submitted for approval. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 89–88), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: December 4, 1992.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 48 be amended as set forth below:

PART 48—VALUE ENGINEERING

1. The authority citation for 48 CFR part 48 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 48.101 is amended by revising paragraph (b) introductory text and (b)(1) to read as follows:

48.101 General.

* * * * *

(b) There are two value engineering approaches, as follows:

(1) The first is an incentive approach in which contractor participation is voluntary. The contractor develops and submits value engineering change proposals (VECP's) and shares in the savings of any that are accepted. The contract provides for payment of implementation costs if a VECP is accepted. The development costs for accepted and unaccepted VECP's shall be accumulated by value engineering (VE) project and charged indirectly if otherwise allowable in accordance with part 31.

* * * * *

[FR Doc. 92–30241 Filed 12–11–92; 8:45 am]

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0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-017-00101-5)	6.50	Apr 1, 1992
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr 1, 1992
200-End	(869-017-00103-1)	11.00	[6]Apr. 1, 1991
28	(869-017-00104-0)	37.00	July 1, 1992
29 Parts:			
0-99	(869-017-00105-8)	19.00	July 1, 1992
100-499	(869-013-00106-6)	9.00	July 1, 1992
*500-899	(869-017-00107-4)	32.00	July 1, 1992
900-1899	(869-017-00108-2)	16.00	July 1, 1992
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-017-00111-2)	9.00	[7] July 1, 1989
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
*1-199	(869-017-00114-7)	25.00	July 1, 1992
200-699	(869-017-00115-5)	19.00	July 1, 1992
700-End	(869-017-00116-3)	25.00	July 1, 1992
31 Parts:			
0-199	(869-017-00117-1)	17.00	July 1, 1992
200-End	(869-017-00118-0)	25.00	July 1, 1992
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-017-00119-8)	30.00	July 1, 1992
190-399	(869-017-00120-1)	33.00	July 1, 1992
400-629	(869-017-00121-0)	29.00	July 1, 1992
630-699	(869-017-00122-8)	14.00	[8] July 1, 1991
700-799	(869-017-00123-6)	20.00	July 1, 1992
800-End	(869-017-00124-4)	20.00	July 1, 1992
33 Parts:			
1-124	(869-017-00125-2)	18.00	July 1, 1992
125-199	(869-017-00126-1)	21.00	July 1, 1992
200-End	(869-017-00127-9)	23.00	July 1, 1992
34 Parts:			
1-299	(869-017-00128-7)	27.00	July 1, 1992
300-399	(869-017-00129-5)	19.00	July 1, 1992
400-End	(869-017-00130-9)	32.00	July 1, 1992
35	(869-017-00131-7)	12.00	July 1, 1992
36 Parts:			
1-199	(869-017-00132-5)	15.00	July 1, 1992
200-End	(869-017-00133-3)	32.00	July 1, 1992
37	(869-017-00134-1)	17.00	July 1, 1992
38 Parts:			
0-17	(869-013-00135-4)	24.00	July 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991
39	(869-017-00137-6)	16.00	July 1, 1992
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-013-00139-7)	28.00	July 1, 1991
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-013-00144-3)	30.00	July 1, 1991
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-017-00153-8)	9.50	July 1, 1992
101	(869-013-00154-1)	22.00	July 1, 1991
102-200	(869-017-00155-4)	11.00	[8] July 1, 1991
201-End	(869-017-00156-2)	11.00	July 1, 1992
42 Parts:			
1-60	(869-013-00157-5)	17.00	Oct. 1, 1991
61-399	(869-013-00158-3)	5.50	Oct. 1, 1991
400-429	(869-013-00159-1)	21.00	Oct. 1, 1991
430-End	(869-013-00160-5)	26.00	Oct. 1, 1991
43 Parts:			
1-999	(869-013-00161-3)	20.00	Oct. 1, 1991
1000-3999	(869-013-00162-1)	26.00	Oct. 1, 1991
4000-End	(869-013-00163-0)	12.00	Oct. 1, 1991
44	(869-013-00164-8)	22.00	Oct. 1, 1991
45 Parts:			
1-199	(869-013-00165-6)	18.00	Oct. 1, 1991
200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
500-1199	(869-013-00167-2)	26.00	Oct. 1, 1991
1200-End	(869-013-00168-1)	19.00	Oct. 1, 1991
46 Parts:			
1-40	(869-013-00169-9)	15.00	Oct. 1, 1991
41-69	(869-013-00170-2)	14.00	Oct. 1, 1991
70-89	(869-013-00171-1)	7.00	Oct. 1, 1991
90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
140-155	(869-013-00173-7)	10.00	Oct. 1, 1991
156-165	(869-013-00174-5)	14.00	Oct. 1, 1991
166-199	(869-013-00175-3)	14.00	Oct. 1, 1991
200-499	(869-013-00176-1)	20.00	Oct. 1, 1991
500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
47 Parts:			
0-19	(869-013-00178-8)	19.00	Oct. 1, 1991
20-39	(869-013-00179-6)	19.00	Oct. 1, 1991
40-69	(869-013-00180-0)	10.00	Oct. 1, 1991
70-79	(869-013-00181-8)	18.00	Oct. 1, 1991
80-End	(869-013-00182-6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1-51)	(869-013-00183-4)	31.00	Oct. 1, 1991
1 (Parts 52-99)	(869-013-00184-2)	19.00	Oct. 1, 1991
2 (Parts 201-251)	(869-013-00185-1)	13.00	Dec. 31, 1991
2 (Parts 252-299)	(869-013-00186-9)	10.00	Dec. 31, 1991
3-6	(869-013-00187-7)	19.00	Oct. 1, 1991
7-14	(869-013-00188-5)	26.00	Oct. 1, 1991
15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
49 Parts:			
1-99	(869-013-00190-7)	20.00	Oct. 1, 1991
100-177	(869-013-00191-5)	23.00	Dec. 31, 1991
178-199	(869-013-00192-3)	17.00	Dec. 31, 1991
200-399	(869-013-00193-1)	22.00	Oct. 1, 1991
400-999	(869-013-00194-0)	27.00	Oct. 1, 1991
1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
1200-End	(869-013-00196-6)	19.00	Oct. 1, 1991
50 Parts:			
1-199	(869-013-00197-4)	21.00	Oct. 1, 1991
200-599	(869-013-00198-2)	17.00	Oct. 1, 1991
600-End	(869-013-00199-1)	17.00	Oct. 1, 1991
CFR Index and Findings Aids	(869-017-00053-1)	31.00	Jan. 1, 1992

Title	Stock Number	Price	Revision Date
Complete 1992 CFR set		620.00	1992
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Subscription (mailed as issued)		188.00	1992
Individual copies		2.00	1992

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.